(34,110)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 60

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA AND THE CITY OF LOS ANGELES, APPELLANTS,

vs.

LOS ANGELES RAILWAY CORPORATION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

INDEX

	Original	Print
Record from the district court of the United States, Southern California	*a*	1
Stipulation re transcript of record	*e*	1
Order approving stipulation	*f*	1
Citation and service (omitted in printing)	*g*	
Præcipe for transcript of record	1	2
Appellee's præcipe for transcript of record	5–*a*	5
Amended bill of complaint	6	7
Exhibit "A"—Application for order establishing rates	81	75
Exhibit "B"—Supplemental application for adjustment of rates	124	111
Exhibit "C"—Opinion and order of Railroad Commission, No. 18,531	159	161
Exhibit "D"—Opinion and order of Railroad Commission, No. 19,521	162	165
Exhibit "E"—Application for rehearing, No. 19,521	169	175

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 31, 1929

	Original	Print
Exhibit "F"—Order denying rehearing	183	196
Exhibit "G"—Proposed rates of fare	185	197
Exhibit "H"—Present rates of fare	195	208
Notice of motion for interlocutory injunction	222	234
Motion for interlocutory injunction	224	235
Order setting hearing	227–*a*	237
Summons and marshal's return (omitted in printing)	227–*a* 3	
Motion of City of Los Angeles for leave to intervene	228	238
Order allowing intervention	231	239
Notices of motion to dismiss	232	240
Motion to dismiss, Railroad Commission	237	242
Motion to dismiss, City of Los Angeles	249	251
Answer of Railroad Commission	253	253
Answer of City of Los Angeles	260	280
Excerpts from affidavits in support of complaint	328–*a* 1	313
George J. Kuhrts	328–*a* 1	313
Phil B. Harris	328–*a* 6	317
Richard Sachse	328–*a*14	322
Excerpts from affidavits in opposition to motion for interlocutory injunction	329	347
W. C. Fankhauser	329	347
H. G. Mathewson	330	347
A. G. Mott	333	350
John E. Cooper	337	353
Eugene P. McAuliffe	341	357
Exhibits—List of franchises	344	360
Fred F. Ball	350	382
Exhibits 1, 2, and 3—Charts	364	385
Edward L. Crocken	367	385
Exhibit "A"—Tabulation from board's records of franchises granted	370	387
Exhibit "B"—Tabulation of all active and operative franchises	383	394
Exhibit "C"—Ordinance No. 2532, City of Los Angeles	387	39[illegible]
Exhibit "D"—Ordinance No. 27,413, City of Los Angeles	394	402
Exhibit "E"—Ordinance No. 59,600, City of Los Angeles	409	414
Exhibit "F"—Franchise, granted August 5, 1886	422	425
Exhibit "G"—Franchise, granted July 1, 1887.	424	427
Exhibit "H"—Ordinance No. 173, County of Los Angeles	427	429
Counter affidavit of H. G. Weeks	436	436
Excerpts from Co. Exhibit 20—Memorandum on investment, valuation, etc	438–*a* 1	439
Exhibits 21, 22, and 23—Estimates of operating results	438–*a* 3	441

	Original	Print
Exhibit 35—Statement of revenue and expenses, 1926..	439	445
Exhibit 45-A—Estimate of results under present fares, 1927	440	446
Exhibit 48—Revenues, expenses, etc., by bus line, 1923 to 1926, inclusive	441	448
Excerpts from papers attached to Exhibit 49	442-*a* 1	450
Excerpts from Exhibit 53	442-*a* 4	451
Excerpts from Exhibit 63	442-*a* 6	453
Excerpts from Exhibit 64	451-*a* 2	459
Company's Exhibit 68—Estimates based upon plans of one-man operation	452-*a* 1	470
Narrative statement of evidence before Railroad Commission	452-*a* 2	471
Testimony of R. A. Crowe	452-*a* 2	471
P. B. Harris	452-*a* 3	472
Richard Sachse	452-*a* 4	473
B. W. Campbell	452-*a*15	483
Delos F. Wilcox	452-*a*18	485
T. D. Hughes	452-*a*25	490
John E. Cooper	452-*a*27	491
J. E. Cooper	453	493
A. G. Mott	455	496
H. G. Weeks	463	506
R. B. Hill	469	511
L. A. Recappe	471	513
A. G. Mott	473	515
Colloquy between court and counsel	479-*a* 2	521
Computation of flat fares which will produce various rates of return	483	524
Affidavit of Richard Sachse	486-*a* 1	527
Order for decree	487	533
Opinion per curiam	488	534
Decree allowing injunction	506-*a* 1	549
Objections of defendants to form of decree and injunction	507	552
Reply to defendants' objections	511	554
Answer to plaintiff's reply	514	557
Supplemental reply to defendants' objections	516	558
Decree allowing injunction	518	559
Injunction	520-*a* 1	563
Petition for appeal	521	566
Order allowing appeal	524	567
Citation and service.....(omitted in printing)..	527	
Bonds on appeal.....(omitted in printing)..	529	
Assignments of error	535	568
Orders extending time	548	579
Clerk's certificate.....(omitted in printing)..	552	
Statement of points to be relied upon and designation to print entire record	555	580

[fols. a-e]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

In Equity. No. N-115J

Los Angeles Railway Corporation, a Corporation, Plaintiff,

vs.

Railroad Commission of the State of California, Defendant

Stipulation for Transcript of Record

It is stipulated by the parties to the above entitled cause that the portions of the record designated in the Præcipe of Appellants, Railroad Commission of the State of California and the City of Los Angeles, and filed with the Clerk of the above Court, together with the portions of the record designated in the Præcipe of Appellee, Los Angeles Railway Corporation, a corporation, and filed with said Clerk, shall constitute the complete record to be made up in the above entitled cause and transmitted to the Clerk of the Supreme Court of the United States.

Arthur T. George, Ira H. Rowell, Roderick B. Cassidy, Attorneys for Defendant and Appellant Railroad Commission of the State of California. Jess E. Stephens, Herman Mohr, J. L. Ronnow, Attorneys for Intervenor Defendant and Appellant, City of Los Angeles. Gibson, Dunn & Crutcher, Woodward M. Taylor, Attorneys for Plaintiff and Appellee, Los Angeles Railway Corporation, a Corporation.

[fol. f] In United States District Court

(Title omitted)

Order Approving Stipulation

The foregoing Stipulation for Transcript of Record is hereby approved.

Wm. P. James, U. S. District Judge.

Los Angeles, California, March 20, 1929.

[fols. g & h] Citation, in usual form, showing service on Gibson, Dunn & Crutcher, filed October 2, 1928, omitted in printing.

[fol. 1] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE OF APPELLANTS, RAILROAD COMMISSION OF THE STATE OF CALIFORNIA AND CITY OF LOS ANGELES—Filed Jan. 29, 1929

To the Clerk of the District Court of the United States in and for the Southern District of California, Southern Division, Greeting:

The above named appellants hereby file their Præcipe, and indicate the following documents and items as the portions of the record before the District Court of the United States, in and for the Southern District of California, Southern Division, which they ask to be incorporated into the transcript on appeal of the above-entitled cause.

Portions of the Record Desired by Appellants to be Incorporated in the Transcript

(1) A copy of this Præcipe.

(2) A copy of the Amended Bill of Complaint, with all exhibits attached thereto, filed by appellee, Los Angeles Railway Corporation, in said Court on July 7, 1928, with the endorsements thereon.

(3) A copy of appellee, Los Angeles Railway Corporation's Notice of Motion for Interlocutory Injunction.

[fol. 2] (4) A copy of appellee, Los Angeles Railway Corporation's Motion for Interlocutory Injunction, with the endorsements thereon.

(5) A copy of appellant, City of Los Angeles' Motion to Intervene, with the endorsements thereon.

(6) A copy of the Order of said Court allowing appellant, City of Los Angeles, to intervene.

(7) A copy of appellant, Railroad Commission's Notice of Motion to Dismiss, with the endorsements thereon.

(8) A copy of appellant, City of Los Angeles, Notice of Motion to Dismiss, with the endorsements thereon.

(9) A copy of appellant, Railroad Commission's Motion to Dismiss, with the endorsements thereon.

(10) A copy of appellant, City of Los Angeles' Motion to Dismiss, with the endorsements thereon.

(11) A copy of appellant, Railroad Commission's Answer, with the endorsements thereon.

(12) A copy of appellant, City of Los Angeles' Answer, with the endorsements thereon.

(13) Portions of Affidavits filed with said Court on behalf of the Railroad Commission, reduced whenever possible to narrative form:

A. From the Affidavit of W. C. Fankhauser.

B. From the Affidavit of H. G. Mathewson.

C. From the Affidavit of A. G. Mott.

D. From the Affidavit of John Edward Cooper.

E. From the Affidavit of Eugene P. McAuliffe.

(14) Portions of Affidavits filed with said Court on behalf of the City of Los Angeles, reduced wherever possible [fol. 3] to narrative form:

A. From the Affidavit of Fred F. Ball.

B. From the Affidavit of Edward Lee Crocken.

(15) Portions of the Affidavit of H. G. Weeks, filed in said Court on behalf of the Los Angeles Railway Corporation.

(16) The following portions of the Affidavit of H. G. Mathewson filed with said Court on behalf of the Railroad Commission, being portions of the record before the Railroad Commission in Application No. 13,323, before it, the original of which record was attached to the original copy of said Affidavit:

A. The following Exhibits before said Railroad Commission:

(1) Exhibit No. 35.

(2) Exhibit No. 45-a.

(3) Exhibit No. 48.

(4) Pages 15 (portion); 19; 20; 22 (portion) 23, 24, 25, 26, 27 (portion) of Exhibit No. 63.

(5) Portion of Exhibit No. 64.

B. From the transcript of testimony before said Railroad Commission, reduced to narrative form, being portions of the testimony of the following witnesses, the num-

bers of the pages from which such testimony has been reduced appearing in the margin:

(1) From the Testimony of J. E. Cooper.

(2) From the Testimony of A. G. Mott.

(3) From the Testimony of H. G. Weeks.

(4) From the Testimony of R. B. Hill.

[fol. 4] (5) From the Testimony of L. A. Recappe.

(6) Further from the Testimony of A. G. Mott.

(17) Extract from Reporter's Transcript of Argument before Statutory Court, Los Angeles, July 24, 1928.

(18) A copy of certain computations filed by appellant, Railroad Commission, on August 7, 1928, in compliance with request of statutory court, with the endorsements thereon.

(19) A copy of the said court's order for decree.

(20) A copy of the Opinion of said court on Motion for Interlocutory Injunction.

(21) A copy of Plaintiff's Proposed Decree Allowing Injunction.

(22) A copy of appellants' reasons for non-approval and objections to the form of the proposed decree.

(23) A copy of appellee's Reply to Appellants' said Reasons for non-approval.

(24) A copy of appellants' Answer to Reply to appellee to said reasons for non-approval.

(25) A copy of appellee's supplemental reply to appellants' said reasons for non-approval.

(26) A copy of the said court's Decree Allowing Injunction.

(27) A copy of said court's Injunction.

(28) A copy of Appellants' Petition for Appeal, with the endorsements thereon.

(29) A copy of said court's Order Allowing Appeal, with the endorsements thereon.

(30) A copy of the Citation on Appeal, with the endorsements thereon.

(31) A copy of appellant, Railroad Commission's Bond on Appeal.

[fol. 5] (32) A copy of appellant, City of Los Angeles' Bond on Appeal.

(33) Assignment of Errors.

(34) A copy of the said court's minute order extending time for the docketing of this cause until January 3, 1929.

(35) A copy of a letter from the Clerk of the Supreme Court of the United States acknowledging receipt of the District Court's minute order extending time for the docketing of this cause until February 3, 1929.

(36) A copy of the said court's minute order extending time for the docketing of this cause until March 3, 1929.

Respectfully submitted.

Carl I. Wheat, Reginald L. Vaughan, Roderick B. Cassidy, Solicitors for Defendant and Appellant, Railroad Commission of the State of California.
Jess E. Stephens, Herman Mohr, J. L. Ronnow, Solicitors for Defendant and Appellant City of Los Angeles.

Dated January 29, 1929.

[File endorsement omitted.]

[fol. 5a-1] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE OF APPELLEE LOS ANGELES RAILWAY CORPORATION, A CORPORATION—Filed Feb. 8, 1929

To the Clerk of the District Court of the United States in and for the Southern District of California, Southern Division, Greeting:

The above named appellee hereby files its Præcipe, and indicates the following documents and items as the portions of the record before the District Court of the United States, in and for the Southern District of California, Southern Division, which it asks to be incorporated into the transcript on appeal in the above-entitled case.

Portions of the Record Desired by Appellee to be Incorporated in the Transcript

(4⅛) Order of District Court setting Hearing on Motion for Interlocutory Injunction with endorsements (new).

(4¼) Subpœna ad respondendum with endorsements (new).

(4½) Marshal's Return of Service with endorsements (new).

(4¾) Marshal's Return of Service with endorsements (new).

[fol. 5a-2] (12½) Portions of Affidavits filed with said Court on behalf of the Los Angeles Railway Corporation, in narrative form:

A. Affidavit of George J. Kuhrts (new).

B. Affidavit of Phil B. Harris (new).

C. Affidavit of Richard Sachse (new).

(13) C. From Affidavit of A. G. Mott—Revised Pages 335 and 336, Appellants' Transcript.

D. From Affidavit of Jno. Edward Cooper—Revised Pages 337 to 340, inclusive, Appellants' Transcript.

(14) A. From Affidavit of Fred E. Ball—Revised Page 363, Appellants' Transcript.

(15) Portions of Affidavit of H. G. Weeks—Revised Pages 436, 437 and 438, Appellants' Transcript.

(16) A. The following Exhibits before the Railroad Commission—

(a) Portion of Exhibit No. 20 (new).

(b) Exhibit No. 21 (new).

(c) Exhibit No. 22 (new).

(d) Exhibit No. 23 (new).

(3½) Portion of Exhibit No. 49 (new).

(3¾) Portion of Exhibit No. 53 (new).

(4) Pages 1 (portion); 6; 7; 8; 9 (portion); 14; 15 (portion); 22; Exhibit No. 63 (new); Pages 27 (portion); 28, Ex-
[fol. 5a-3] hibit No. 63 (new); Page 30, Exhibit No. 63 (new).

(5) Pages 1; 2; 3 (portion), Exhibit No. 64 (new).

(6½) Exhibit No. 68 (new).

B. From the Transcript of testimony before the Commission—

(a) From the testimony of R. O. Crowe (new).

(b) From the testimony of P. B. Harris (new).

(c) From the testimony of Richard Sachse (new).

(d) From the testimony of B. W. Campbell (new).

(e) From the testimony of Delos F. Wilcox (new).

(f) From the testimony of T. D. Hughes (new).

(g) From the testimony of Jno. E. Cooper (new).

(h) From the testimony of Jno. E. Cooper (new).

(2) From the testimony of A. G. Mott—Revised Page 455, Revised Page 461, Revised Page 462, Revised Page 463.

(3) From the testimony of H. G. Weeks—Revised Page 463, Revised Page 464, Revised Page 465, Revised Page 468.

(4) From the testimony of R. B. Hill—Revised Page 470.

(5) From the testimony of L. A. Recappe—Revised Page 472.

[fol. 5a-4] (6) Further from the testimony of A. G. Mott—Revised Page 473, Revised Page 474, Revised Page 475, Revised Page 476, Revised Page 478, Revised Page 479.

(7) Statement by City Attorney Stephens (new).

(17) Additional Extracts from Reporter's Transcript of Argument before the Statutory Court, Los Angeles, July 24, 1928 (new).

(18½) Copy of Appellee's mathematical demonstration filed August 9, 1928, as requested by the Court (new).

Respectfully submitted.

S. M. Haskins, Woodward M. Taylor, Solicitors for Plaintiff and Appellee, Los Angeles Railway Corporation. Paul R. Watkins, Herbert F. Sturdy, of Counsel.

Dated Los Angeles, February 8, 1929.

[fol. 5a-5] Received copy of the within Præcipe and portions of the record thereto attached this 8th day of February, 1929.

Carl I. Wheat, Reginald L. Vaughan, Roderick B. Cassidy, Solicitors for Appellant Railroad Commission of the State of California. Jess E. Stephens, Herman Mohr, James L. Ronnow, Solicitors for Appellant City of Los Angeles.

[File endorsement omitted.]

[fol. 6] [File endorsement omitted]

[fol. 7]

Note

This amended complaint is identical in text with the original bill, except as to the following typographical errors and omissions in the original:

Page 23, line 4, RCNDL changed to RCNLD.
Page 24, line 27, ditto.
Page 25, lines 22 and 23, transposed.
Page 25, line 22, (3) inserted.
Page 41, line 32, $8,500 changed to $7,000.
Page 47, line 21, after the word "Commission" the word "engineers" inserted.
Page 64, line 27, after the word "and" the word "inadequate" inserted instead of "adequate."

[fol. 8] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED BILL OF COMPLAINT—Filed June 28, 1928

To the Honorable the Judges of the District Court of the United States in and for the Southern District of California, Southern Division:

Los Angeles Railway Corporation, a corporation, plaintiff herein, brings this its amended bill of complaint against the above named defendant, and complains and alleges as follows:

For its first cause of action:

I

Plaintiff is a corporation duly organized and existing under and by virtue of the laws of the state of California, with its offices and its principal place of business in the city of Los Angeles, and is a citizen and resident of the state of California. It is the operating company of the Los Angeles Railway Company, the Los Angeles Traction Company, and the City Railway Company of Los Angeles, and as such under its charter powers owns or leases, has con-
[fol. 9] structed or acquired, and is maintaining and operating, as a "common carrier" and as a "street railroad corporation" (as such terms are respectively defined in the Public Utilities Act of the state of California, hereinafter mentioned), a unified passenger transportation system consisting of double and single track electric railway and motor bus lines aggregating more than 400 single track miles of electric railway and more than 90 miles of motor bus lines in and between the city of Los Angeles and the cities of

Hawthorne, Inglewood, Vernon and Huntington Park, all in Los Angeles county, California. Plaintiff's electric lines occupy public streets by virtue of franchises granted by said cities and by the county of Los Angeles, the majority of which substantially or expressly provide that

"The rate of fare to be charged under this franchise shall not be more than five cents for one continuous ride in the same general direction within the corporate limits of the city, except upon a showing before a competent authority having jurisdiction over rates of fare, that such greater charge is justified."

Plaintiff's motor bus lines are operated in pursuance of permits from certain of said cities and from the county of Los Angeles, which contain no provisions as to rates of fare.

As such common carrier plaintiff is and at all times since March 23, 1912, has been subject to the provisions of said Public Utilities Act of the state of California.

A brief history of plaintiff and its related companies is set forth below and is quoted from the California Railroad Commission's decision No. 2193 (6 C. R. C. 274):

"In 1898 Mr. H. E. Huntington began an active interest in the street railway situation in Los Angeles. On January 17, 1899, he reorganized the Los Angeles Railway Company into which he consolidated the Main Street and Agricultural [fol. 10] Park Railway, organized November 27, 1874, and the San Pedro Street Railway Company.

"At the time the Los Angeles Railway Corporation was formed, November 21, 1910, it took over the property of the Los Angeles Railway Company, portions of the Los Angeles and Redondo Railway Company, portions of the Pacific Electric Railway Company, the Los Angeles Interurban, and the Los Angeles Traction Company.

"City Railway Company of Los Angeles was organized December 1, 1910, for the purpose of financing certain new construction and extensions.

"The lines constructed or to be constructed by City Railway Company of Los Angeles and the rolling stock acquired by it, or to be acquired by it, are operated or to be operated by Los Angeles Railway Corporation under a lease dated August 25, 1911. The lease is for a term of years beginning December 8, 1910, and ending February 1, 1941.

"By the terms of the lease, Los Angeles Railway Corporation is under obligation to keep the property of City Railway Company of Los Angeles in good repair; to pay all operating expenses; all licenses, taxes or assessments levied upon the property of City Railway Company of Los Angeles; all interest and other fixed charges, including all sums required to be provided as a sinking fund for the purpose of paying off the principal of the bonds of City Railway Company of Los Angeles and to keep full insured all of the personal property, buildings, structures, and appliances of every kind for the benefit of City Railway Company of Los Angeles.

"The lease or agreement provides further that Los Angeles Railway Corporation shall be entitled to receive any and all rents, issues, profits, tolls, receipts of any and [fol. 11] every kind, to which City Railway Company of Los Angeles would be entitled had the lease not been executed.

"Los Angeles Railway Corporation has an authorized stock issue of $20,000,000.00, divided into 200,000 shares of the par value of $100.00 each. All of the stock is outstanding.

"City Railway Company of Los Angeles has an authorized stock issue of $5,000,000.00, divided into 50,000 shares of the par value of $100.00 each. All of the company's stock is outstanding.

"The Los Angeles Railway has an authorized stock issue of $20,000,000.00, divided into 200,000 shares of the par value of $100.00 each.

"The evidence submitted in connection with this application shows that Mr. H. E. Huntington owns all of the stock, except enough to qualify directors, of City Railway Company of Los Angeles and Los Angeles Railway Corporation and that he proposes to exchange these shares for all of the stock of the Los Angeles Railway, except such shares as may be necessary to qualify the directors."

The history of the plaintiff and its related companies as set forth in said statement is true and correct.

II

The Railroad Commission of the state of California, defendant herein (hereinafter referred to as the "Commission") is the administrative board or body of the state of

California administering the regulatory powers over public utilities conferred upon it by the state Constitution and by an act of the Legislature of the state known as the "Public Utilities Act," enacted 1911, approved December 23, 1911, and in effect March 23, 1912 (Statutes of 1911, extra session, chapter 14, page 18; re-enacted 1915; Statutes 1915, chapter 91, page 115), as amended. Said Commission has [fol. 12] its principal office in the city of San Francisco and a branch office in the city of Los Angeles, state of California.

III

The wrongs sought to be redressed in this action, the relief sought by this bill of complaint, and the grounds upon which the jurisdiction of this court depends, are as follows:

Plaintiff seeks relief from its present confiscatory rates of fare and to enjoin the enforcement of that certain decision and order (decision No. 19521) made and entered by the Commission on March 26, 1928 (hereinafter more specifically referred to), whereby the Commission denied plaintiff's application for an increase in rates and denied plaintiff permission to put into effect or to charge and collect just, reasonable and compensatory rates. Plaintiff seeks to enjoin the compulsory continuance of said present rates of fare and the enforcement of said decision and order on the grounds that said present rates of fare are unjust, unreasonable, non-compensatory and confiscatory; and that said decision and order of the Commission is confiscatory and was arbitrarily and unlawfully made and entered; that it takes the property of plaintiff without just compensation; that it deprives plaintiff of its property without due process of law; and that it denies to plaintiff the equal protection of the law, all contrary to and in violation of the fifth and fourteenth amendments to the Constitution of the United States.

And in addition to the above general statement, the further facts, circumstances and conditions hereinafter in this bill of complaint averred and set forth disclose, justify and necessitate the exercise of the jurisdiction of this court to afford the relief herein prayed by plaintiff.

The amount in controversy, exclusive of interest and costs, is in excess of three thousand dollars ($3,000).

[fol. 13] IV

The rate of fare charged and collected by plaintiff has always been and now is a basic fare of five cents. In May, 1921, upon the application of plaintiff to the Commission for an investigation of its service and financial condition and for an order authorizing it to so operate its system and change its rates that the income would be sufficient to pay the cost of the service, the Commission made a permissive order (decision No. 9029) authorizing plaintiff within thirty days to increase its basic five-cent fare to six cents, and authorizing plaintiff to sell ten tickets or tokens in blocks at a total cost of fifty cents. By said order of the Commission plaintiff was also ordered to set aside into a separate depreciation fund monthly the sum of $60,000 ($720,000 per annum) to insure against the depreciation of its property. Said increase in fares was never charged and collected by plaintiff for the following reasons:

(a) In its original application in said proceeding plaintiff stated that it desired to operate its system, if possible, so that it would be unnecessary to increase the five-cent fare, and that in order so to do it was willing to cooperate to the fullest extent with the Commission and the authorities of the city of Los Angeles and put into practice whatever changes and economies of operation might appear possible and necessary to the regulating authorities.

(b) The late Henry E. Huntington, then principal owner and stockholder of the properties, and as such the one upon whom fell the major portion of the losses sustained by plaintiff by reason of its continued use of the five-cent fare, desired to attempt to increase the earnings of the company by other means than the collection of a basic fare greater than five cents. Plaintiff by reason of such attitude on the part of Mr. Huntington is now indebted to his estate and interests, as evidenced by unsecured loans and by unpaid interest on funded and unfunded debt, in an amount in excess of $8,000,000, which represents in large part the accumulated deficit over a long period of years by reason [fol. 14] of plaintiff's inability and failure to earn a fair return. Notwithstanding such large accumulated deficit, however, plaintiff has not sought from the commission and

does not now seek any return which would enable it to make good all or any part of such losses.

V

By reason of the facts and circumstances hereinafter alleged, the present rates of fare on plaintiff's street railway system have become, were particularly during the years 1926 and 1927, now are, and will continue to be for the future, unjust, unreasonable, inadequate, insufficient, non-compensatory and confiscatory of the property used and useful by plaintiff in the transportation of passengers upon its said system; and the said present rates of fare have been at least during said period, and now are, and will continue to be insufficient to yield a reasonable compensation for the service rendered by plaintiff, and have been, now are, and will continue to be insufficient and inadequate to provide a fair return upon the fair and reasonable value of the property actually used by plaintiff in the operation of said street railway system and devoted to the public service; and have deprived, do now deprive and will continue to deprive plaintiff of a fair and reasonable return upon the fair and reasonable value of its property devoted to the public, contrary to the Constitution of the United States, as hereinafter more fully alleged and shown.

The present rates of fare charged and collected by plaintiff are set forth as Exhibit "H" in the appendix to this bill and by this reference thereto are made a part of this bill as fully as though herein set forth at length.

VI

(a) As of September 30, 1926, plaintiff had, and now has, issued and outstanding 200,000 shares of its common capital stock of the par value of $100 each, or a total of $20,000,000 par value of common capital stock, upon which dividends, in bonds only and not in cash or stock, in the sum of $1,500,000, [fol. 15] and no more, have been paid since the year 1911, the last payment thereof being in December, 1913, all as shown in the following financial statement:

Table No. 1

Financial Statement September 30, 1926

Amount and kind of stock authorized: Common Stock	$20,000,000.00
Amount and kind of stock issued and outstanding: Common Stock	$20,000,000.00

Dividends Paid Since Date of Incorporation, Nov. 7, 1910

Year	Rate	Cash or bonds	Amount
July 1911.	2%	(City Railway Co. Bonds).	$400,000.00
Aug. 1912.	2%	do.	400,000.00
Feb. 1913.	2%	do.	400,000.00
Dec. 1913.	1½%	do.	300,000.00
			$1,500,000.00

(b) As of said date, September 30, 1926, the funded debt of plaintiff and its subsidiary company, City Railway Company of Los Angeles, was the sum of $21,124,000, as shown on the following consolidated statement:

Table No. 2

Consolidated Statement of Funded Debt September 30, 1926

Funded Debt:		
Los Angeles Traction Company	$250,000.00	
Los Angeles Railway Company	4,722,000.00	
Los Angeles Railway Corporation	14,880,000.00	
[fol. 16] City Railway Company of Los Angeles	5,000,000.00	
		$24,852,000.00
Less Bonds in Sinking Funds:		
Los Angeles Railway Corporation	2,491,000.00	
City Railway Company of Los Angeles	1,237,000.00	
		3,728,000.00
Total Funded Debt		$21,124,000.00

As of March 31, 1927, said consolidated funded debt had been reduced by reason of accruals to sinking funds to the sum of $20,897,000, as shown in the following statement:

Table No. 3

Consolidated Statement of Funded Debt March 31, 1927

Funded Debt:		
Los Angeles Traction Company	$250,000.00	
Los Angeles Railway Company	4,722,000.00	
Los Angeles Railway Corporation	14,880,000.00	
City Railway Company of Los Angeles	5,000,000.00	
		$24,852,000.00
Less Bonds in Sinking Funds:		
Los Angeles Railway Corporation	2,588,000.00	
City Railway Company of Los Angeles	1,367,000.00	
		3,955,000.00
Total Funded Debt		$20,897,000.00

And as of date May 31, 1928, said consolidated funded debt has been further decreased, by reason of accruals to [fol. 17] sinking funds, to the sum of $19,990,085, which is now the amount of said consolidated funded debt.

(c) As of September 30, 1926, the floating or unfunded debt of plaintiff and its subsidiary company, City Railway Company of Los Angeles, was the sum of $11,168,380, as shown in the following statement:

[fol. 18]

Table No. 4

Floating Debt September 30, 1926

Loans and Notes Payable

(Los Angeles Railway Corporation Notes)

Date of note	In favor of	Date due	Rate of int.	Amount	
Jan. 27, 1922	Pacific Mutual Life Ins. Co	1/27/27	6%	$400,000.00	
July 15, 1926	First National Bank	10/13/26	5%	100,000.00	
" 26, 1926	"	10/24/26	"	100,000.00	
Aug. 14, 1926	"	11/12/26	"	100,000.00	
Sep. 9, 1926	"	12/ 8/26	"	100,000.00	
Jan. 1, 1925	H. E. Huntington	1/ 2/25	"	100,000.00	
Mar. 1, 1925	"	3/ 2/25	"	67,000.00	
July 12, 1926	"	6/12/27	"	500,000.00	
June 15, 1926	"	12/15/26	"	222,000.00	
Feb. 1, 1923	Huntington Land & Impr. Co	8/ 1/23	6%	487,000.00	
May 21, 1923	"	6/ 1/23	"	78,000.00	
Jan. 2, 1924	"	1/ 3/24	"	100,000.00	
" 2, 1924	"	1/ 3/24	"	100,000.00	
" 29, 1924	"	7/29/24	"	200,000.00	
Aug. 31, 1924	"	8/14/24	"	200,000.00	
Jan. 29, 1925	"	1/30/25	"	200,000.00	
Mar. 16, 1925	"	3/17/25	"	38,232.64	
Aug. 13, 1924	Redondo Improvement Co	8/14/24	"	100,000.00	
Feb. 6, 1926	U. S. Steel Products Co	2/ 5/27	"	64,261.20	
					3,356,493.84

(City Railway Co. of Los Angeles Notes)

Sep. 11, 1926	Bethlehem Steel Company.....	8/11/27	6%	50,095.99	
Nov. 23, 1925	Fageol Motors Company	10/23/26	"	50,851.50	
Dec. 30, 1925	"	11/30/26	"	13,500.00	
Dec. 18, 1925	"	11/18/26	"	22,116.00	
June 21, 1926	"	5/21/27	"	32,670.00	
Aug. 9, 1926	"	7/ 9/27	"	32,670.00	
Sept. 15, 1926	"	8/15/27	"	74,571.00	
July 18, 1926	First National Bank.....	10/16/26	5%	100,000.00	
Aug. 5, 1926	"	11/ 3/26	"	100,000.00	
" 9, 1926	"	11/ 7/26	"	100,000.00	
Sept. 15, 1926	"	12/14/26	"	100,000.00	
Apr. 12, 1926	Howard Automobile Co.....	12/11/26	6%	13,675.75	
Dec. 29, 1925	Mack International Motor Truck Corporation	11/29/26	"	24,600.00	
May 15, 1926	Mack International Motor Truck Corporation	4/15/27	"	13,343.45	
Mar. 17, 1926	Yellow Mfg. Sales Corp.....	2/17/27	"	50,067.40	
					778,161.09
	H. E. Huntington—Open Account				1,345,950.00
	Total Loans and Notes Payable				5,480,604.93

2—20

TABLE No. 4—Continued

Other Accounts:	
Audited Accounts and Wages Payable	513,216.13
Bonus—Suspense	89,928.68
Miscellaneous	347.92
Bond Interest matured and unpaid	4,242,250.00
Accrued Interest	297,833.33
Accrued Taxes	57,229.06
Accrued Surplus Appropriation for Sinking Fund—Company Bonds	486,970.83
Total	$11,168,380.88

As of March 31, 1927, said floating or unfunded debt was the sum of $11,575,749.89, as shown on the following table:

[fol. 19]

TABLE No. 5

Floating Debt March 21, 1927

Loans and Notes Payable

(Los Angeles Railway Corporation Notes)

Date of note	In favor of	Date due	Rate of int.	Amount
Jan. 11, 1927	First National Bank	4/11/27	5%	100,000.00
Jan. 22, 1927	"	4/22/27	"	200,000.00
Feb. 10, 1927	"	5/11/27	"	100,000.00
Mar. 8, 1927	"	6/ 6/27	"	100,000.00

Jan. 1, 1925	H. E. H. Int. to H. E. H.....	1/ 2/25	"	100,000.00	
Mar. 1, 1925	"	3/ 2/25	"	67,000.00	
July 12, 1926	" Newport News	6/12/27	"	500,000.00	
Dec. 15, 1926	" P. S. T. & S. B.	6/15/27	"	172,000.00	
Feb. 1, 1923	Hunt. Land & Impr. Company..	8/ 1/23	6%	487,000.00	
May 31, 1923	" ..	8/ 1/23	"	78,000.00	
Jan. 2, 1924	" ..	1/ 3/24	"	200,000.00	
Jan. 29, 1924	" ..	7/29/24	"	200,000.00	
Aug. 13, 1924	" ..	8/14/24	"	200,000.00	
Jan. 29, 1925	" ..	1/30/25	"	200,000.00	
Mar. 16, 1925	" ..	3/17/25	"	38,232.64	
Dec. 1, 1926	" ..	12/ 2/26	"	150,000.00	
Aug. 13, 1924	Redondo Improvem't Company	8/14/24	"	100,000.00	
Nov. 15, 1926	Willard-Brent Co., Inc.....	10/15/27	"	7,385.25	
Dec. 15, 1926	"	11/15/27	"	7,527.12	
Dec. 15, 1926	"	11/15/27	"	10,340.65	
Jan. 15, 1927	"	12/15/27	"	13,083.30	
Jan. 15, 1927	"	12/15/27	"	8,272.50	
Feb. 15, 1927	"	1/15/28	"	15,689.25	
Mar. 15, 1927	"	2/15/28	"	11,668.50	
Mar. 15, 1927	"	2/15/28	"	1,500.00	
Jan. 27, 1922	Pacific Mutual Life Ins. Co....	1/27/30	"	400,000.00	
					3,467,699.18

TABLE No. 5—Continued

(City Railway Co. of Los Angeles Notes)

Date of note	In favor of	Date due	Rate of int.	Amount	
Jan. 27, 1927	A. W. Arlin	12/27/27	6%	17,680.00	
Feb. 12, 1927	"	1/12/28	"	17,680.00	
Mar. 24, 1927	"	2/24/28	"	17,680.00	
Sept. 11, 1926	Bethlehem Steel Co	8/11/27	"	50,095.99	
June 21, 1926	Fageol Motors Co	5/21/27	"	32,670.00	
Aug. 9, 1926	"	7/ 9/27	"	32,670.00	
Sept. 15, 1926	"	8/15/27	"	74,571.00	
Nov. 4, 1926	"	10/ 4/27	"	21,780.00	
Dec. 20, 1926	"	11/20/27	"	44,600.00	
Mar. 12, 1927	"	2/12/28	"	18,240.00	
Jan. 14, 1927	First National Bank	4/14/27	5%	100,000.00	
Feb. 1, 1927	"	5/ 2/27	"	100,000.00	
Feb. 5, 1927	"	5/ 6/27	"	100,000.00	
Mar. 14, 1927	"	6/12/27	"	100,000.00	
May 15, 1926	Mack Inter. Mtr. Truck Corp.	4/15/27	6%	13,343.45	
Mar. 19, 1927	U. S. Steel Products Co	2/19/28	"	48,489.38	
Oct. 13, 1926	Yellow Mfg. Sales Corp	9/13/27	"	10,650.20	
Oct. 30, 1926	"	9/30/27	"	10,800.00	
Feb. 14, 1927	"	1/14/28	"	27,290.55	
Mar. 11, 1927	"	2/11/28	"	43,918.00	
					882,158.57
	H. E. Huntington—Open Account				1,345,950.00
	Total Loans and Notes Payable				5,695,807.75

Other Accounts:

Audited Accounts and Wages Payable	530,730.39
Bond Interest matured and unpaid	4,468,275.00
Accrued Interest	297,833.33
Bonus Suspense	36,261.72
Miscellaneous	470.87
Accrued Surplus Appropriation for Sinking Fund—Company Bonds	546,370.83
Total	11,575,749.89

[fol. 20] And as of date, May 31, 1928, said floating or unfunded debt has increased to and is the sum of $11,697,037.

Excluding from each of the above totals of plaintiff's floating or unfunded debt the indebtedness due and payable to said H. E. Huntington, his estate or his interests, the annual minimum interest requirements on the remainder of said floating or unfunded debt and on said funded debt for the years 1926, 1927 and part of 1928 were and are as follows:

Table No. 6

Annual Interest Requirements on Funded and Unfunded Debt

(Exclusive of Indebtedness to H. E. Huntington Estate & Interest)

	Principal		
	Funded debt	Unfunded debt	Interest
1926.....	$20,984,697	$2,163,838	$1,353,896
1927.....	20,585,385	2,232,788	1,362,426
1928.....	19,990,085	2,144,786	1,292,588*

VII

(a) Plaintiff's books show and plaintiff alleges that the total actual operating revenue of plaintiff for the year 1926 was $13,021,482, its total actual taxes for the said year were $807,926, and its total actual operating expenses exclusive of taxes for said year were $11,738,925, leaving an actual net operating income of only $1,282,558 available for interest and fair return, the details of which are shown in the following table, which was in evidence before the Commission in the proceeding hereinafter referred to (Application No. 13323):

*This figure includes interest to May 31, 1928, only, in the sum of $63,919 on the unfunded debt exclusive of that due the Huntington estate and interest.

[fol. 21]

Table No. 7

Statement of Actual Revenue and Expenses for the Year 1926

Rail Operations:	
Railway Operating Revenue:	
Revenue from Transportation	$11,992,346
Other Revenue	126,113
Total	12,118,459
Railway Operating Expenses:	
Operating Expense	8,530,274
Depreciation	1,282,350
Total	9,812,624
Net Operating Revenue	2,305,835
Taxes	763,829
Operating Income—(Rail)	1,542,006
Bus Operations:	
Los Angeles Railway:	
Operating Revenue	565,152
Operating Expenses	752,859
Net Loss before Taxes	187,707
Taxes	24,447
Operating Loss	212,154
Los Angeles Motor Bus Company:	
Operating Revenue	675,921
Operating Expenses	731,335
Net Loss before Taxes	55,414
[fol. 22] Taxes	39,307
Operating Loss	94,721

Los Angeles Railway Corp. proportion (approximately 50%)	48,254
Total Loss Bus Operations	260,408
Operating Income—Rail and Bus 1926	$1,281,598

Subsequent to the receipt in evidence by the Commission of said Table No. 7 some slight adjustments were made in the detailed figures. "Operating Income—Rail and Bus 1926 $1,281,598" to the total of $1,282,558, as shown in plaintiff's sworn annual report to the Commission and as hereinabove alleged.

Said sum of $1,282,558 is equivalent to a return of only 2.79% on the minimum value of the property of plaintiff then devoted to the public service.

(b) For the year 1927 the figures on plaintiff's books show and plaintiff alleges that its total actual operating revenue was $13,287,601, its total actual taxes were $814,347 and its total actual operating expenses exclusive of taxes were $11,062,013, leaving an actual net operating income of only $1,411,241 available for interest and fair return, all as shown by the following statement:

Table No. 8

Statement of Actual Revenue and Expenses for the Year 1927

Revenue from Transportation	$13,161,389
Revenue from other railway operations	126,212
Total operating revenue	13,287,601
Railway operating expenses	11,062,013
Net revenue	2,225,588
Taxes	814,347
Operating income available for return	1,411,241

[fol. 23] Said sum of $1,411,241 is equivalent to a return of only 3% on the minimum value of the property devoted by plaintiff to the public use during the year 1927.

(c) For the year 1928, based upon actual figures for the first quarter and upon estimates on the same basis for the

remaining three-quarters of said year, plaintiff alleges that its total operating revenues under the five-cent fare will be not more than $13,300,000, and its total operating expenses, including taxes, will be not less than $12,688,000, leaving an estimated net operating income for the year 1928 of not more than $612,000 available for interest and fair return.

Said sum of $612,000 is equivalent to a return of only 1.30% on the minimum value of plaintiff's property used and useful in the public service during said year of 1928.

All of the above tables are true and correct and the above estimate is as accurate as it is now possible to make it, and all of the above tables numbered 1, 2, 3, 4, 5 and 7 were received in evidence by the Commission in the proceeding hereinafter referred to (application No. 13323) and stand unrefuted, uncontradicted and unquestioned in the record of said proceeding.

VIII

Plaintiff alleges that during the year 1926, due to the rapid growth and large increase in population which had taken place during recent years in the city of Los Angeles and the communities served by plaintiff's transportation system, and which said growth and increase gave and gives every promise and indication of continuing in the future, it became apparent to plaintiff that certain additions and betterments requiring capital expenditures and certain renewals were essential in order for plaintiff to continue to provide safe, adequate and efficient transportation service for its increasing number of patrons, and to keep its system to a point of development and service commensurate with the needs and requirements of the public, and thereupon [fol. 24] there was made by the chief engineer of plaintiff a careful estimate of said requirements requisite for the three-year period beginning 1927 and ending in 1929, inclusive. Said estimate revealed and plaintiff alleges that, in order to enable *to* system to keep pace with the growing needs and requirements of the city and its inhabitants, capital expenditures in the sum of $6,124,110 and renewals in the sum of $3,138,894, or total expenditures of $9,263,004, were required to be made by plaintiff for said period. Such estimate is shown herewith in detail as follows:

Table No. 9

Total Expenditures for Renewals and Additions and Betterments for Three Years, 1927, 1928, 1929

	Estimated capital expenses	Estimated operation charge depreciation	Total estimated expenditures
#1. Way & Structures:			
1. Track reconstruction	$1,262,675	$1,527,986	$2,790,661
Special work renewals	.....	450,000	450,000
Removals	.....	7,663	7,663
2. Extensions including special work	751,703	.....	751,703
3. New Viaducts	688,084	79,218	767,302
4. Land for Dump Tracks	75,000	.....	75,000
5. Renewals, Lighting Changes Divisions 1, 2, 3, 5	20,700	20,700	41,400
6. 16th Street Yards (Bus and Automobile Headquarters) Extensions, additions and Betterments	422,762	.....	422,762
[fol. 25]			
7. South Park Shops, additions to property	37,594	.....	37,594
8. Electric Distribution System Positive & Negative Feeders.	125,735	.....	125,735
1,500 volt high lines	131,147	.....	131,147
Poles and fixtures	38,227	219,210	257,437
9. Transformers & motors for shop power and lights	17,865	.....	17,865
10. Office Equipment	6,000	.....	6,000
11. Roadway machinery & tools	39,855	2,000	41,855
	$3,617,347	$2,306,777	5,924,124
#2. Equipment:			
1. 100 new passenger cars replacing 100 old cars $8,000 per car to capital	800.00	550,000	1,350,000
2. Miscellaneous & Service equipment	45,430	.....	45,430
3. Elec. Equip. of cars, motor housing changes & fare boxes	80,220	34,850	115,070
4. Buses:			
45 single deck buses @ $8,700	391,500	.....	391,500
30 double deck buses @ $11,500	345,000	.....	345,000
5. Shop equipment	68,057	3,000	71,057
	$1,730,207	$587,850	2,318,057

#3. Power:	Estimated capital expenses	Estimated operation charge depreciation	Total estimated expenditures
1. Present Substations: Additions & Betterments.....	390,036	217,267	607,303
[fol. 26]			
2. Supervisory control system...	84,375	.....	84,375
3. New Substantion "S" Manchester and Broadway 1,000 K. W. Set and 34 feeder panels, building and land..	108,940	.....	108,940
4. New Substation "I" Inglewood 2-500 K. W. sets, for feeder panels, building and land...	76,465	27,000	103,465
5. New Substation "R" West Adams and Vineyard, 1,000 K. W. set, 4 feeder panels, building and grounds.....	116,740	.....	116,740
Grand Total.....	$776,556 $6,124,110	$244,267 $3,138,894	1,020,823 9,263,004

Said estimate is true and correct and each and every item therein set forth is necessary and essential to the proper development and growth of plaintiff's system, and to the continued rendition by plaintiff of safe, adequate and efficient transportation service, and said estimate was likewise received in evidence by the Commission in the proceeding hereinafter referred to (Application No. 13323) and stands in the record of said proceeding unrefuted, uncontradicted and unquestioned as to the accuracy, propriety and necessity of all or any of said items.

Plaintiff alleges that if compelled to keep in effect and to charge and collect its present basic fare of five cents it will be unable by reason of the inadequate and insufficient earnings therefrom to carry out said program of additions, betterments and renewals, and as a consequence thereof plaintiff will be unable to continue to render safe, adequate and efficient transportation service, and the development and [fol. 27] service requirements of the system must inevitably be curtailed below the point necessitated and demanded by its car-riding public and below the point at which plaintiff is willing, desirous and anxious to keep it.

IX

Throughout the years 1923, 1924 and 1925 a detailed and exhaustive survey and examination of all plaintiff's prop-

erties was made upon the initiative and under the authority of the Railroad Commission by Lester S. Ready, chief engineer of the Commission, F. A. Lorentz, chief engineer of the Board of Public Utilities of the city of Los Angeles, and his successor, J. O. Marsh, and Richard Sachse, consulting engineer of plaintiff. The results of such extensive investigation were embodied in a signed agreed joint report (hereinafter referred to as the "Joint Report"), submitted to the Commission, the city and the plaintiff in October, 1925. Said report included a complete and detailed inventory and valuation covering all of the properties of plaintiff as of March 31, 1923, brought up to date as of December 31, 1924, by the inclusion of additions and betterments and adjustment for depreciation.

In said Joint Report it is stated (italics ours):

"*The valuation of both* *local *properties were made* "*under the general supervision of the engineers of the* "*California Railroad Commission and generally follow the* "*method and the definitions adopted by the Commission.* "Both inventories and valuations are segregated as be- "tween operative and non-operative property and property "inside of the city limits and outside the city limits. The "inventory is divided and the valuation figures segregated [fol. 28] "as between track divisions and show separately "property jointly owned and operated. In both valuations "the following four estimates have been made:

"(a) Historical reproduction cost.
"(b) Historical reproduction cost less depreciation.
"(c) Reproduction cost new.
"(d) Reproduction cost new less depreciation.

"The valuation of the Los Angeles Railway (entire sys- "tem), which is a separate part of the present report, con- "sists of four volumes. * * *

"From the beginning of the valuation work we have ad- "hered to the plan to reach agreement wherever possible, "and as a consequence there is contained in the valuation "report and agreed inventory covering the property of "both lines and agreed valuation estimates as to the four "elements of value indicated above, up to a certain point.

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*Said joint report included also a detailed and exhaustive study of all the properties of the Pacific Electric Railway Company's local Los Angeles lines.

"The figures as to which there is no dispute are designated "as "Agreed Figures." Beyond the agreed figures there "are certain items of dispute involving claims of the com- "panies on which a decision could not be reached by the "engineers and which have been referred to the Commission. "*It should be understood, however, that there is agreement "also on the computations and the totals involved in the "disputed points. If the position taken by the companies "should be held valid, it is agreed these are the amounts "that should be added.* * * *

"The detailed inventories and appraisals of the two "properties were made as of March 31, 1923, and brought "up to date as of December 31, 1924, by the inclusion of "the additions and betterments and adjustment for depre- "ciation.

"Our conclusion, expressed in valuation totals for the "later date, is shown on the following tabulation:

[fol. 29] "Valuation Totals as of December 31, 1924—

"Agreed Figures

"Items	Amount
"Reproduction Cost New less Depreciation:	
"(1) Total operative property	$54,256,785
"(2) Total operative and non-operative property	54,745,328
"Reproduction Cost New Less Depreciation:	
"(3) Total operative property	39,998,891
"(4) Total operative and non-operative property	40,331,172
"Historical Reproduction Cost:	
"(5) Total operative property	41,678,050
"(6) Total operative and non-operative property	42,051,007
"Historical Reproduction Cost less Depreciation:	
"(7) Total operative property	32,703,474
"(8) Total operative and non-operative property	32,970,664

"Valuation Totals as of December 31, 1924—Agreed Figures Plus Companies' Claims

"Items	Amount
"Reproduction Cost New:	
"(9) Total operative property	57,850,263
"(10) Total operative and non-operative property	58,338,796
"Reproduction Cost New less Depreciation:	
"(11) Total operative property	42,769,773
"(12) Total operative and non-operative property	43,102,054
"Historical Reproduction Cost:	
"(13) Total operative property	43,174,620
"(14) Total operative and non-operative property	43,547,577
"Historical Reproduction Cost less Depreciation:	
"(15) Total operative property	34,186,524
"(16) Total operative and non-operative property	34,453,714

"NOTE—All figures include Materials and Supplies.

[fol. 30] (NOTE—In the interests of economy of space, plaintiff has eliminated from said tabulation all except those figures pertaining only to plaintiff's property.)

"The foregoing tabulation of values covers physical "properties and materials and supplies, *but there is not "included any allowance for working capital, nor for any "of the so-called intangible values, such as going-concern "value or development cost.*

"We are aware of the fact that in a sale or in a pro- "ceeding involving the issuance of bonds, as well as in pro- "ceedings fixing rates, no one single valuation figure will "necessarily be the governing one and that the final figure "determined for any purpose by the party possessing the "power of fixing such value would be a figure taking into "account all elements of value.

"The joint memorandum as of March 8, 1923, provided "that the inventories and valuations be made in a form to "permit a keeping current of the valuation. *This has been "done. The Los Angeles Railway has arranged to keep*

"*to date the valuation of its property and has organized a* "*force for this purpose.* (pp. 3 to 8.) • • •"

"The detailed valuation of the property of the Los An- "geles Railway Corporation is a separate part of this re- "port (Part III) and consists of four volumes:

"Book I. General Description and Discussion of Valua- "tion and Summaries of Valuation Totals.

"Book II. Inventory and Detailed Valuation of Accounts "502 to 508, inclusive.

"Book III. Inventory and Detailed Valuation of Ac- "counts 510 to 519, inclusive.

"Book IV. Inventory and Detailed Valuation of Ac- "counts 521 to 544, inclusive.

"As shown in Book I of the valuation, the inventory was "made as of March 31, 1923, and to the figures as of that "date were added the net additions and betterments to De- [fol. 31] "cember 31, 1924, bringing the valuation totals to "the latter date.

"In accordance with the instructions contained in the "memorandum of March 8, 1923, above referred to, the "following valuation estimates were made:

"(a) Reproduction Cost New (RCN).

"(b) Reproduction Cost New less Depreciation "(RCNLD).

"(c) Historical Reproduction Cost (HRC).

"(d) Historical Reproduction Cost less Depreciation "(HRCLD).

"Agreed Inventory and Valuation Figures.

"There has been complete cooperation between the en- "gineers of the three parties and *it may be stated that all* "*of the facts entering into the valuation are agreed upon* "*and there remain only a few differences,* although the "total valuation figures are affected by these differences to "a considerable extent.

"The inventory of the physical property is agreed upon "and there is also agreement between the engineers as "to the determination of unit prices, of condition per cent "and accrued depreciation. *The valuation totals, there-* "*fore, up to a certain point are the agreed upon estimates* "*of the engineers for the Commission, the city and the* "*company.*

"A summary of the grand totals of the valuation appears "on the page following.

[fol. 32]

"Table XVII

"Figures Agreed Upon by Engineers of Commission, City and Company

"Valuation as of March 31-1923

	"RCN	RCNLD	HRC	HRCLD
"(1) Total operative property, inside and outside city	45,834,930	33,141,252	32,597,715	24,924,846
"(2) Total non-operative property inside and outside city	488,533	356,486	372,957	292,553
"(3) Total operative and non-operative property inside and outside city	46,323,463	33,497,738	32,970,672	25,217,399
"(4) Materials & supplies	819,317	819,317	819,317	819,317
"(5) Total operative and non-operative property, including material and supplies	47,142,780	34,317,055	33,789,989	26,036,716

"Valuation as of December 31-1924

("Valuation as of March 31, 1923, Plus Net Additions and Betterments to December 31, 1924)

"(6) Net additions and betterments* April 1-1923 to December 31-1924	7,411,865	5,847,639	8,070,335	6,773,207
"(7) Total operative property, inside and outside city (lines 1-6)	53,246,795	38,988,891	40,668,050	31,698,053
[fol. 33] "(8) Total non-operative property, inside and outside city	488,533	332,281	372,957	262,611

"*Additions and betterment figures and adjusted for depreciation, retirements and abandonments." (pp. 153-4-5.)

"(9) Total operative and non-operative property inside and outside city (lines 7-8)	53,735,328	39,321,172	41,041,007	32,960,664
"(10) Materials and Supplies	1,010,000	1,010,000	1,010,000	1,010,000
"(11) Total operative and non-operative property, including material and supplies (lines 9-10)	54,745,328	40,331,172	42,051,007	32,970,664

3—60

The disputed or unagreed items referred to in said joint report were (1) the value of rights of way owned in fee by plaintiff in certain street areas; (2) expenditures by plaintiff for oiling rights of way, and (3) the length of time estimated to reconstruct the property of plaintiff as affecting the cost of reconstruction, twenty-seven months being estimated by the engineers of the Commission and the city, and three years by the engineer of plaintiff.

Said joint report further states (italics ours):

"The following additions should be made to the valuation of December 31, 1924, if a *three year* "construction period is adopted, *the correctness and reasonableness of the additions being agreed* "*upon by the engineers of the three parties:*

	"RCN	RCNLD	HRC	HRCLD
"(1) Total property as of December 31, 1924, (agreed upon figures)	54,745,628	40,331,172	42,051,007	32,970,664
"(2) Rights in public streets	1,469,530	1,469,530	1,469,530	1,469,530
"(3) Oiling right of way	27,759	13,879	24,865	12,433
[fol. 34] "(4) Three year construction period	2,095,544	1,287,009	.....	.....
"(5) Total property, operative and non-operative as of December 31, 1924	54,338,161	43,101,590	43,545,402	34,452,627

"The valuation contains no allowances for working capital, "going concern, development costs, or intangibles of any "kind.

"In accordance with the provisions of the memorandum "of March 8, 1923, a method has been developed by the "company, in cooperation with the Commission's and city's "engineers, to permit a keeping current of the valuation, "and an organization has been created to handle this work. *"It is the intention to keep current the inventory quantities "and also the valuation estimates, so that at any time in "the future there may be available the valuation of this "property in accordance with the definitions adopted in this "report."* (pp. 157-8.)

In the preceding quotations from the joint report, and in the preceding table No. XVII therefrom, there are shown the four valuation estimates (1) reproduction cost new (RCN), (2) reproduction cost new less depreciation (RCNLD), (3) historical reproduction cost (HRC) and (4) historical reproduction cost less depreciation (HRCLD).

In the joint report there is also a definition of the valuation item of "Original Cost" (OC) and the statement appears therein that a figure for original cost could not be ascertained.

Historical reproduction cost less depreciation, in accordance with the Commission's definition in said joint report, is based on the actual original cost or, in case the actual original cost is not known, the estimated original cost to plaintiff of all of such property as was in existence on the date of the valuation. There is deducted from such cost [fol. 35] (except as to land which is included at 1923 market value) the estimated depreciation due to use, age, obsolescence, inadequacy or other causes. This estimate, therefore, makes full allowance and full deduction for depreciation, but does not make any allowance for appreciation, (except partially for land), or for the difference of present day costs compared with original costs. It is conceded by all parties to the proceeding before the Commission (Application No. 13323) that this estimate (HRCLD) is not a proper basis for determining the present fair and reasonable value of plaintiff's property or a proper method for finding a "rate base." The estimate of historical reproduction cost less depreciation was used in the joint report,

however, to ascertain the amount of depreciation that is to be made good annually, as a part of operating expense, if such depreciation is to be computed on the estimated or actual original cost of plaintiff's property, on the straight line basis, instead of upon the present value of such property.

In subsequent computations herein, therefore, neither original cost nor historical reproduction cost less depreciation will be referred to, the former not being ascertainable as to plaintiff's property and the latter by agreement of all parties not being applicable in ascertaining a rate base therefor.

Said joint report was first received in evidence by the Commission in a formal proceeding before it in September, 1924, was again transmitted to it by the signers thereof in October, 1925, and was again, in its entirety as to plaintiff's street railway system, received in evidence by it in the proceeding hereinafter referred to (Application No. 13323).

The actual present fair value of plaintiff's properties devoted to the public use, upon the bases of the figures and under the methods agreed upon in said joint report, is substantially greater than the sums therein shown, when all proper elements are taken into account, and as hereinafter alleged, is not less than $47,000,000. Plaintiff accordingly submits the above valuation summaries and computations [fol. 36] of said joint report without prejudice, and with reservation of right to prove the full, complete and present figures on the trial of this action.

Since the filing of said joint report with the Commission in 1924, plaintiff has kept and is now keeping current the valuation estimates contained in said report, and in so doing has used and now uses the definitions and methods agreed upon in said joint report. Said current valuation estimates, under the definitions used in the joint report and upon the several bases of valuation therein as of December 31, 1926, and without any allowance for working capital, development cost, or for going concern and without any allowance for any of the approximately one hundred of plaintiff's franchises (except actual cost of acquisition), are as shown in the following table:

Table No. 10

Los Angeles Railway

Valuation of Operative Property as of December 31, 1926

Items	Reproduction cost new	Straight-line basis, reproduction cost new less depreciation	5% sinking fund basis, reproduction cost new less depreciation	Historical reproduction cost
(1) Valuation figures agreed upon by the engineers of the California Railroad Commission, Board of Public Utilities of the city of Los Angeles, and the consulting engineer for the Los Angeles Railway Corporation, as of December 31, 1924, (including Materials and Supplies)	$54,256,795	$39,998,891	$44,662,606	$41,678,050
(2) Net Additions and Betterments, January 1, 1925, to December 31, 1926*	1,173,298	1,173,298	1,173,298	1,748,012
(3) Sub-total	55,430,093	41,172,189	45,835,904	43,426,062

*Adjustments for retirements on work orders not closed are etimated.

(4) Adjustment for Depreciation, January 1, 1925, to December 31, 1926	.....	3,797,840	2,434,141	.....
(5) Sub-total	55,430,093	37,374,349	43,401,763	43,426,062
(6) Adjustment for Materials and Supplies, January 1, 1925, to November 30, 1926	227,534	227,534	227,534	227,534
(7) Sub-total	55,202,559	37,146,815	43,174,229	43,198,528
(8) Items claimed by the Company and not yet passed upon by California Railway Commission	3,593,468	2,627,449	2,908,697	1,496,570
(9) Total	58,796,027	39,774,264	46,082,926	44,695,098

NOTE.—The above totals do not include any amounts for working capital or intangible items.

[fol. 38] As of said date December 31, 1926, the minimum fair value, in accordance with the Commission's definitions and bases of valuation referred to in said joint report, of plaintiff's properties devoted to the public use, including minimum allowance for working capital and going value and including the so-called unagreed items in said joint report was as follows:

Table No. 11

Computation Showing Valuation Figures of Plaintiff's Operative Property as of December 31, 1926

	Reproduction cost new	Reproduction cost new less depreciation, straight-line basis	Reproduction cost new less depreciation, sinking fund basis	Reproduction cost new less depreciation, 70% condition	Historical reproduction cost
Operative Physical Property	$57,695,925	$39,475,456	$44,998,648	$40,387,147	$43,497,989
Undistributed Construction Expenditures (work in progress)	244,959	271,959	266,900	270,000	256,959
Material and Supplies	756,142	756,142	756,142	756,142	756,142
Minimum Capital Expenditures during next 18 months	2,817,096	2,790,096	2,795,155	2,792,055	2,805,096
Working Capital	424,000	424,000	424,000	424,000	424,000
Going Value	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000
Total	$63,438,122	$45,217,653	$50,740,845	$46,129,344	$49,240,186

[fol. 39] The actual present minimum fair value of plaintiff's properties devoted to the public use is as aforesaid in excess of $47,000,000, when all proper and lawful elements of value are taken into account, and accordingly plaintiff submits said valuation figures in the above Table 11 without prejudice and with reservation of right to prove the full and actual present fair value of its said properties upon the trial of this action.

X

A return of not less than eight per cent per annum upon the present fair value of the property used by plaintiff in the public service is a fair and reasonable return, and is the rate of return expected and usually realized in the locality where such property is located, with due regard to the risks attending them, and under rates and charges that are in and of themselves reasonable and commensurate with the value of the service rendered.

The rates of fare now charged and collected by plaintiff yielded in the year 1926 a net income available for return of less than 3% upon the minimum fair and reasonable value of plaintiff's properties devoted to the public use, and fell short of earning a 6% return on such value by more than $1,470,000, and fell short of earning a 7% return on such value by more than $1,940,000, and fell short of earning a return of 8% on such value by more than $2,390,000.

Said present rates of fare for the year 1927 yielded a net income available for return of less than 2½% upon the minimum fair and reasonable value of plaintiff's property devoted to the public use, and fell short of earning a return of 6% on such value by more than $1,500,000, of earning a return of 7% on such value by more than $2,000,000, and of earning a return of 8% on such value by more than $2,500,000.

The return received by plaintiff from the present rates of fare charged and collected by it upon its said transportation system has not been and is not now sufficient to main-
[fol. 40] tain and support the credit of plaintiff and to enable it to secure capital funds for the purpose of providing for new construction and equipment. In this connection plaintiff alleges that it is not now and has not for

sometime past been earning sufficient net income available for return to meet the interest payments on its funded and unfunded debt (hereinabove in paragraph VI set forth), notwithstanding the fact that the rate of interest on such debt averages only approximately 5½%, and that by reason of such insufficient earnings its credit is being permanently and irrevocably jeopardized and impaired, with the consequence that, unless plaintiff is permitted to, and does, materially increase its rates of fare as hereinafter prayed, it will be impossible for plaintiff to continue the requisite betterments and extensions to its property that safe, adequate and efficient transportation service requires and that it is willing and anxious to make and that the public demands.

Plaintiff's actual net income available for return for the years 1926 and 1927 (as shown in paragraph VII above) are respectively equivalent to a return of 8% on approximately $16,800,000, a figure which under no conceivable theory or basis of valuation even remotely approximates the fair value of plaintiff's property used and useful in the public service during said years.

XI

Confronted with such daily continuing and drastic confiscation of its property under the basic five cent fare, plaintiff on November 17, 1926, filed with the Commission its Application No. 13323 for authorization to put into effect a basic fare of seven cents with four single fare tickets or tokens for twenty-five cents, including free transfer privilege and half fares for school children and students and with an adjustment of interurban and other fares. Said rates of fare as applied for to the Commission in said Application No. 13323 are the same rates hereinafter requested to be put into effect by this court.

Said application alleged that the then present fair value of plaintiff's property devoted to the public service, with- [fol. 41] out any allowance for capital expenditures to be made in the near future, was, at the lowest reasonable valuation, in excess of $45,000,000; that immediate capital expenditures in excess of $6,000,000 during the succeeding three years were necessary for the improvement and extension of the property; that the operating income for the

year 1925, in spite of efficient and economical operation, was only $1,524,414, and failed by at least $2,000,000 to produce a fair return of 8%, after operating expense, taxes and depreciation, on the then fair value of plaintiff's property, and failed by at least $1,600,000 of earning a return of 7% upon such minimum value; that the amount of revenue available for return, to-wit, bond interest, other fixed charges, sinking funds, and surplus, amounted for the year 1925 to $1,524,414, or a return of less than 3.4% upon said fair and reasonable value of $45,000,000; that the estimated revenue from operation for the years 1926 and 1927 showed a return on said fair value of even less than the year 1925; that both of said returns were, and plaintiff's return for the future under the then present rates of fare, would be unfair, non-compensatory and confiscatory, and were and would be greatly below the actual cost of the money invested in said public service; that the then present rates of fare were insufficient, inadequate, unjust, unreasonable, confiscatory and non-compensatory; that the rates of fare proposed therein, to-wit, a seven cent basic fare with four single fare tokens for twenty-five cents, would produce a total revenue for the year succeeding their being put into effect of $14,368,000 which would result, after reasonable operating expenses and taxes, in a return of less than $3,000,000, or less than 7% upon said fair value of plaintiff's property.

Attached to and made a part of said application was a schedule of the proposed rates (Exhibit "G," appendix to this bill) and numerous exhibits supporting the allegations of the application, said exhibits including, among others, Tables Nos. 1, 2 and 4 hereinabove in this bill set forth.

[fol. 42] A full, true and complete copy of plaintiff's said Application No. 13323 is set forth as Exhibit "A" in the appendix to this bill and is by this reference thereto made a part of this bill as fully as though set forth herein at length, and plaintiff alleges that all of the allegations set forth in said application were and are true and correct and stand in the record before the Commission uncontradicted, unrefuted and unquestioned.

Thereafter a hearing was held by the Commission on said Application No. 13323 on January 13, 1927, at which time plaintiff offered and the Commission received in evidence in support of the allegations of the application, twenty-

eight separate exhibits constituting plaintiff's direct evidence and consisting of various figures and estimates taken from plaintiff's books and records, and including among other things the entire "Joint Report" (hereinabove referred to) in so far as same pertained to plaintiff and including also all the tables numbered 1, 2, 3, 4, 5, 7 and 9 hereinabove in this bill set forth.

Thereupon, upon agreement of all parties, an adjournment of said hearing was taken until May 17, 1927, in order to enable all interested parties, including the city and the Commission, to examine and investigate plaintiff's evidence and the allegations of its application.

XII

Faced still with said daily and continuing confiscation of its property under the basic five cent fare, plaintiff on May 17, 1927, filed with the Commission a verified supplemental application for interim rates pending the decision of the Commission on said original Application No. 13323. Said supplemental application asked authority from the Commission to put into effect and charge, pending its decision on the original application, a basic fare of six cents, including free transfers, half rates for school children and students, and adjustment of interurban and other fares as more specifically therein set forth. Among other matters, figures and facts alleged and set forth in said verified sup- [fol. 43] plemental application, plaintiff specifically alleged therein the acute emergency which confronted it, as follows:

"(a) That as of March 31, 1927, the current liabilities of applicant amounted to $11,029,379.06, including loans and notes payable to the amount of $5,695,807.75 and matured interest unpaid amounting to $4,468,275, and that applicant is unable to continue to finance itself through open account and must forthwith reorganize its financial structure in order to finance itself and to secure the additional capital urgently required through long term bonds issued under proper mortgages:

(b) That applicant is now engaged in carrying out a program of additions, betterments and replacements requiring during the next three years a minimum of capital expendi-

tures of over $6,000,000; more than $2,000,000 of this total having been already definitely decided upon and authorized; and that such capital expenditure program cannot go forward unless additional revenue is provided;

(c) that applicant under existing rates has not during the year 1926, and cannot during the present year, earn its present fixed charges, making possible any refinancing until the present emergency is met;

(d) that applicant for the last two years by reason of its inability to earn a fair return has been permanently and irreparably damaged to an amount of not less than four million dollars ($4,000,000), and will be permanently and irreparably damaged in the present year to an amount of not less than two and three-quarter million dollars ($2,750,000) and that applicant's present inability is continuing solely and exclusively by reason of the failure of the Commission to permit the collecting of rates sufficient to produce a fair return on a fair and reasonable and readily determinable rate base;

[fol. 44] (e) that applicant's application for a rate increase with complete valuation, financial, operating, service and other statistical data has been on file with the Commission for more than six months; that its full evidence was submitted more than four months ago; that a detailed inventory, appraisal and valuation of the company's property made under the Commission's direction and supervision and jointly prepared and submitted by the Commission's, the city's and the company's forces has been on file with the Commission for over two years; that an exhaustive and detailed report on the street railway situation in the city of Los Angeles and of all of this applicant's corporate, financial, operating and service affairs was jointly made upon the direction and initiative of the Commission and the Board of Public Utilities and Transportation of the city of Los Angeles and at an expense to the company largely in excess of $100,000 and filed with the Commission on October 23, 1925;

(f) that the evidence above referred to and other evidence, including the annual reports and other data on file with the Commission, furnish a full and complete basis of

fact, not subject to challenge or contradiction, showing that this applicant is fully entitled to an immediate increase in its rates and furnishes a sufficient and reliable basis to permit your Honorable Commission forthwith to fix such rates;

(g) that the credit and financial standing of applicant will be seriously and irreparably damaged if applicant is not given relief forthwith;

(h) that applicant is being irreparably damaged by the continuance of the present rates which in effect constitutes a most serious and continuous confiscation of its property;

(i) that the interests of the public are being jeopardized and damaged by the real and imminent danger to the financial standing of applicant and its resulting inability to con- [fol. 45] tinue to improve and extend its service as required by the continuous growth of the city and the demands of its patrons and by the willingness of applicant to render the best possible service at the lowest reasonable rates."

and plaintiff further alleged in said supplementary application:

XXIX

"That because of the existing emergency and pending the Commission's and city's investigation in this proceeding, applicant prays your Honorable Commission for immediate approval and authorization to make effective on June 1st, of this year the temporary rate schedule attached hereto and marked 'Statement No. H.' This schedule is based upon a six-cent basic fare, including free transfer privilege and upon adjustment of interurban and other fares as shown in Statement H.

XXX

That applicant is aware and realizes that such temporary emergency rate cannot and will not produce a reasonable and fair return upon any reasonable or fair rate base, but is willing, nevertheless, to put into immediate effect, temporarily, such inadequate rates and accept, temporarily, such inadequate and insufficient return, praying and expecting, however, that the Commission will continue and

expedite such detailed investigation as it may see fit to make in the original proceeding to the end that a permanent, fair and reasonable rate, or rates, be fixed which will produce a fair and reasonable return upon a fair and reasonable rate base and upon the fair value of applicant's property used in the service of the public.

XXXI

That applicant believes and avers that the making effective of the proposed temporary rate schedule referred to [fol. 46] in paragraph XXIX will in the twelve months following the proposed effective date of June 1st of this year produce a total railway operating revenue of approximately $13,500,000, which is an estimated increase over the 1926 revenue of approximately $1,400,000. If this estimated gross revenue is realized it will result in an estimated return after reasonable operating expenses and taxes available for interest and other fair return purposes of somewhat more than $2,000,000, which is less than 5% on the lowest possible fair rate base, in applicant's opinion, of $45,000,000."

Attached to and made a part of said supplemental application was a schedule of the proposed interim rates and numerous exhibits bringing down to date certain of the exhibits theretofore received in evidence by the Commission at its hearing of January 13, 1927, on the original application.

The said facts and allegations set forth in said supplementary application and each of them were and are true and said emergency did and does now exist, all of which was established before the Commission at the various hearings held by it in the proceeding by evidence in the majority of instances uncontradicted, unrefuted and unquestioned and in other instances by the overwhelming preponderance of the evidence.

A full, true and complete copy of plaintiff's said verified supplemented application is set forth as Exhibit "B" in the appendix to this bill and is by this reference thereto made a part of this bill as fully as though set forth herein at length.

XIII

Notwithstanding all the matters, facts and things alleged in plaintiff's said verified supplemental application for interim rates, and notwithstanding the mass of documentary data then before the Commission concerning all of plaintiff's corporate, financial and operating affairs including [fol. 47] valuations, the Commission, nevertheless, on June 20, 1927, made and entered its Decision and Order No. 18531 denying plaintiff's said supplemental application and refusing to authorize plaintiff to charge and collect said proposed basic six cent interim fare.

In said Decision and Order No. 18531 it was stated by the Commission:

"As to the damage that applicant reports it has suffered during the past two years and which it says it will suffer during the present year, that is dependent upon what is a proper rate base, a proper rate of return, a proper allowance for operating expenses and depreciation. In other words, a determination of the extent to which applicant has been damaged, if at all, requires a determination of the major issues in this proceeding."

A full, true and complete copy of said Decision and Order No. 18531 is set forth as Exhibit "C" in the appendix to this bill, and plaintiff alleges that notwithstanding said statement of the Commission in said Decision and Order No. 18531 the Commission failed, neglected and refused in its subsequent Decision and Order No. 19521 to determine the major issues of the proceeding and failed, neglected and refused to find or determine a proper rate of return or a proper allowance for operating expenses and depreciation or the present fair value of plaintiff's properties devoted to the public use.

XIV

Further hearings on plaintiff's original Application No. 13323 were held by the Commission on May 17th, 18th and 28th, and on August 9th, 10th and 11th, 1927, at which times, in addition to the evidence theretofore offered by plaintiff and received by the Commission, numerous calcu-

lations, studies and estimates touching the questions involved were offered in evidence by plaintiff, by the engineering department of the Commission, by the engineering experts of the city of Los Angeles and by others interested, all of which were received in evidence by the Commission. [fol. 48] The entire proceeding was taken under submission by the Commission on August 11th, 1927.

On March 26th, 1928, the Commission made and entered its Decision and Order No. 19521, denying plaintiff's said Application No. 13323, and thereby refusing to authorize plaintiff to put into effect and to charge and collect any rate of fare other than or different from its present basic fare of five cents.

Among other findings of fact contained in said Decision and Order No. 19521, the Commission found the following facts:

Among other findings of fact contained in said Decision and Order No. 19521, the Commission found the following facts:

"1. That a reasonable rate base to be used for the purpose of computing a fair return upon the operative property of this company is the sum of forty-two million dollars ($42,000,000).

* * * * * * *

4. That the rate of return earned by applicant under existing fares and methods of operation for the year ending Dec. 31st, 1927, was approximately 4.9%."

Plaintiff alleges that, as hereinafter more fully alleged and shown, each of said findings of fact one and four and each and all of the other findings of fact of the Commission in said Decision and Order No. 19521 are contrary to the evidence and without support in the record; that each and all of said findings of fact in said decision and order are in disregard of the evidence and are based solely upon estimates introduced in evidence before the Commission by the Commission engineers (Exhibits 52 and 64 in the record), which said estimates were and are arbitrary, inaccurate, erroneous and unlawful in the following particulars:

1. Said estimates failed to take into consideration or to make any allowance for working capital, going value or development cost or the so-called unagreed items referred to in the joint report, all of which plaintiff alleges are proper and lawful elements to be considered in arriving at fair value.

[fol. 49] 2. Said estimates arbitrarily and without reason, justification, explanation or cause reduced certain of plaintiff's overhead allowances more than one million dollars below the figures agreed upon therefor in the joint report.

Plaintiff alleges that for these reasons said estimates of the Commission engineers (Exhibits 52 and 64 in the record) were and are not lawful or any evidence as to the then present fair value of plaintiff's property used and useful in the public service, and that each and all of the findings of fact in said Decision and Order No. 19521 are based on said arbitrary and unlawful estimates and are contrary to the evidence and without support in the record before the Commission.

Plaintiff further alleges that whenever hereinafter in this bill of complaint it is alleged that all or any of said findings of fact are contrary to the evidence and without support in the record the plaintiff means and desires to be understood to mean that said findings are based solely upon said arbitrary and unlawful estimates of the Commission engineers and upon no other evidence in the record.

A full, true and complete copy of said Decision and Order No. 19521 is set forth as Exhibit "D" in the appendix to this bill.

XV

Thereafter and within the time required by law, plaintiff on April 14, 1928, filed with the Commission its application for a rehearing on said Decision and Order No. 19521, setting forth specifically the grounds upon which plaintiff considered said Decision and Order to be unlawful, unconstitutional and void. Among other specific grounds set forth therein, plaintiff's said application for rehearing set forth that:

"(a) Said Decision and Order is in violation of the Constitution of the United States and the Constitution of the

State of California in that it deprives applicant of its property without due process of law, denies applicant the equal [fol. 50] protection of the law, and takes applicant's property for public use without just compensation.

(b) Said Decision and Order is arbitrary, is contrary to the evidence and is wholly without support in the record.

(c) Said Decision and Order deprives applicant of a fair return upon the fair value of its property used and useful in the public service.

(d) Said Decision and Order fails to find and establish the fair value of applicant's property used and useful in the public service.

(e) Said Decision and Order fails to allow for necessary and reasonable operating expenses for the services now given and necessary to be given by applicant.

(f) Said Decision and Order fails to authorize applicant to put into effect and collect the rates and charges set forth in its application filed November 17, 1926.

(g) Said Decision and Order fails to establish and authorize to be charged and collected any fair and reasonable rates which will enable applicant to earn the cost of the service, consisting of adequate and reasonable operating expenses, including depreciation and taxes, and a fair return upon the fair market value of its property used and useful in the public service."

A full, true and complete copy of said Application for Rehearing is set forth as Exhibit "E" in the appendix to this bill and is by this reference thereto made a part of this bill as fully as though set forth herein at length.

XVI

Thereafter and on April 23, 1928, the Commission made and entered its Decision and Order No. 19657 denying Plaintiff's said application for rehearing. A full, true and complete copy of said Decision and Order No. 19657 is set [fol. 51] forth as Exhibit "F" in the appendix to this bill.

XVII

Plaintiff alleges that the rates of fare requested by it to be authorized by the Commission in its said Application No. 13323, to-wit, a basic fare of seven cents with four single fare tokens for twenty-five cents, are just and reasonable rates from the standpoint of the traveling public and no more than sufficient to give plaintiff a fair and reasonable return upon the fair and reasonable value of its properties used and useful in the public service; that plaintiff's properties are modern and that said properties, including tracks, roadbed, and equipment are in first-class operable condition; and compare favorably with any street railway in the state or nation; that the service rendered by plaintiff to the public is as good as, if not better than, that of any other street railway in the state; that plaintiff has acquired, and is acquiring and installing, new equipment from time to time as fast as the same becomes necessary and can be obtained and to the full extent of its ability to meet the cost thereof; that plaintiff is constantly endeavoring to economize and is economizing in its operating costs and methods in every practical manner, and to that degree, and no more, which is consistent with good management and which will enable it to meet the demands of growth of population and changing conditions and of furnishing as safe, adequate and efficient transportation service as is possible under the physical conditions peculiar to the city of Los Angeles and its environs.

XVIII

That by reason of the facts and circumstances above stated and as hereinbefore alleged, plaintiff's property, under the rates of fare now being charged and collected, has at least for the years 1926 and 1927 been confiscated in the minimum aggregate amount of $4,700,000 and is now being confiscated at the continuing rate of not less than $7,000.00 per day; that as above shown the Commission has failed and [fol. 52] refused to grant plaintiff the relief to which it is entitled under the law and that unless relief is accorded by this court plaintiff's property will continue to be confiscated in a constantly increasing daily amount. Plaintiff sets forth as Exhibit "G" in the appendix to this bill a schedule of rates based on a basic fare of seven cents with

four single fare tokens for twenty-five cents which are the rates set forth in its said Application No. 13323 and proposed by it to be authorized by the Commission. Reference is hereby made to said Exhibit "G" and the same is made a part of this bill with the same force and effect and as fully as though same was set forth herein at length.

The rates of fare set forth in said Exhibit "G" are just and reasonable and are no more than adequate and compensatory and although same if charged and collected will not earn a fair return of 8% on the fair and reasonable value of plaintiff's property devoted to the public service, will nevertheless remove the acute emergency which confronts plaintiff and will avoid to that extent the further confiscation of its property. Plaintiff therefore requests that pending the final determination of this action it be permitted by this court by proper order and decree to charge and collect the rates of fare set forth in said Exhibit "G," or such rates of fare in excess of its present rates of fare as this court may deem just, reasonable, compensatory and non-confiscatory, and as evidence of plaintiff's good faith and likewise its desire to do equity plaintiff offers to have printed and to issue with each fare paid after such order of this court, refund tickets or checks for the excess between the present existing and the said proposed rates of fare and, if it be finally determined by this court that the present existing rates of fare are just, reasonable and non-confiscatory, to redeem each and every one of said refund tickets or checks upon presentation; and plaintiff further offers to give and furnish bond in whatever amount this court may see fit to fix conditioned that it will well and truly make said refunds and perform such other obligations in the premises as may be required by the court. If the plan to issue said [fol. 53] refund tickets or checks be not satisfactory or acceptable to this court, plaintiff further offers to comply with any plan which the court may deem just, fair and equitable to all parties concerned.

XIX

In the operation of its said transportation system, and as such common carrier of passengers, plaintiff transports daily, on the average, about 950,000 passengers. During the year ending December 31, 1927, it transported 344,066,006 passengers. There is no means by which plaintiff can

collect fares from the passengers transported by it unless such fare be paid in cash upon or before the transportation of such passengers. If plaintiff should make a charge to any passenger in excess of its present rates of fare without the protection of this court, plaintiff is informed and believes and therefore alleges that such passenger would refuse to pay such fare; and if plaintiff should remove from its cars and busses such passengers who refuse to pay such charge or should refuse to admit them thereto, plaintiff is advised and believes and therefore alleges that under the terms and provisions of Sec. 73 of said Public Utilities Act it would at once be subjected to a multiplicity of suits from such passengers to compel transportation or for damages for breach of duty to transport.

Should plaintiff fail to comply with the Commission's said Decision and Order No. 19521 denying plaintiff's application for increased rates and should plaintiff put into effect or attempt to charge and collect the rates of fare applied for to the Commission and herein proposed or any rates of fare in excess of its existing rates, the Commission will, unless restrained by the judgment or order of this court, institute or cause to be instituted proceedings to compel compliance with plaintiff's existing rates, and plaintiff, its directors, officers, agents and employees will be subjected to a multiplicity of suits and contempt proceedings and will incur and become liable for the penalties [fol. 54] and punishments prescribed by the terms and provisions of sections 74 to 81, inclusive, of said Public Utilities Act, which authorize a fine not exceeding $1,000.00 or imprisonment in the county jail not exceeding one year, or both such fine and imprisonment, for each and every offense, and which provide that each violation of the act or of the Commission's order is a separate and distinct offense and that in case of a continuing violation, each day's continuance thereof shall be and be deemed a separate and distinct offense, and which provide further that all penalties accruing under said act shall be cumulative.

The last legislative function of rate making having, under the laws of the state, been exhausted by plaintiff by its application for a rehearing on said Decision and Order No. 19521 and the Commission's denial thereof, and by reason of the facts and circumstances hereinabove in this paragraph alleged, plaintiff has no plain, speedy, or adequate

remedy at law and is without any adequate remedy for recourse from the daily continuing and ever increasing confiscation of its property by its existing confiscatory rates, and such injury and confiscation is irreparable, except for the intervention of a Federal court of equity.

XX

Unless the defendant Commission is restrained and enjoined by this court as hereinafter prayed, plaintiff, its directors, officers, agents and employees will be deterred and prevented by the threat and fear of the numerous and excessive fines and penalties provided in said Public Utilities Act, and by the threat and fear of imprisonment therefor, as above alleged, from putting into effect the just, reasonable, and compensatory rates set forth in Exhibit "G" hereto, or any rate or rates in excess of its present existing confiscatory rates, and will thereby be forced to continue in effect and to charge and collect said present existing rates and to submit to the resulting continuing confiscation of its properties without just compensation, without due process of law and without the equal protection [fol. 55] of the law, all in violation of plaintiff's rights under the Constitution of the United States, as hereinabove alleged.

And for a second cause of action:

XXI

Plaintiff here realleges each of the matters and things stated and set out in paragraphs numbered I to XX, both inclusive of this bill, with the same force and effect as if the same were herein again repeated and set out.

XXII

Said Decision and Order No. 19521 of the Commission is, as hereinafter more specifically alleged and shown, arbitrary, confiscatory, and void in the following particulars:

1. By requiring plaintiff to continue to charge and collect the then and now existing rates of fare, said Decision and Order was and is and will continue to be confiscatory of plaintiff's property, and deprived, does now deprive, and if permitted to stand will continue to deprive plaintiff of

its property without just compensation, and without due process of law, and denied, does now deny and will continue to deny to plaintiff the equal protection of the law, all in violation of the Constitution of the United States.

2. Said Decision and Order is arbitrary, is contrary to the evidence and is without support in the record.

3. Said Decision and Order deprives plaintiff of a fair, reasonable and compensatory return upon the fair value of its property used and useful in the public service.

4. Said Decision and Order fails to find and establish the fair value of plaintiff's property used and useful in the public service.

5. Said Decision and Order fails to allow plaintiff for necessary and reasonable operating expenses for the service now given and necessary in the future to be given by it.

[fol. 56] 6. Said Decision and Order fails to establish and to authorize plaintiff to put into effect and to charge and collect any just, fair and reasonable rates which will enable plaintiff to earn the cost of service, consisting of adequate and reasonable operating expenses including depreciation and taxes, and a fair return upon the fair and reasonable value of its property used and useful in the public service.

XXIII

Said Decision and Order No. 19521 is arbitrary, confiscatory and void in that it is found as a fact therein:

"1. That a reasonable rate base to be used for the purpose of computing a fair return upon the operative property of this company is the sum of forty-two million dollars ($42,000,000)."

Said fining is arbitrary, confiscatory and contrary to the evidence and without support in the record before the Commission, and such rate base of $42,000,000 is confiscatory, erroneous, grossly inadequate and in excessive diminution of the fair and reasonable value of plaintiff's property used and useful in the public service.

Said rate base of $42,000,000, so found by the Commission to be the reasonable rate base to be used in computing a fair return upon plaintiff's property, is based and pred-

icated upon, and the Commission in arriving at said figure, proceeded and acted upon, the fundamentally erroneous theory that the controlling element in the valuation of plaintiff's property was its historical reproduction cost, without any allowance for working capital, going value or development cost, rather than upon the fair and reasonable value of all plaintiff's property devoted to the public use at the time of the inquiry.

Notwithstanding the fact that the Commission's chief engineer in 1925, under the direction and authority of the Commission, after making throughout the years 1923, 1924, and 1925 an exhaustive and detailed valuation of plaintiff's operative property as of December 31, 1924, agreed in the joint report (see paragraph IX hereof) that as of said date the value of plaintiff's said operative property without [fol. 57] taking into account or making any allowance for working capital, going concern or development cost, was:

RCN	RCNLD	HRC
$54,256,795	$39,998,891	$41,678,050

all of which was in evidence before the Commission on plaintiff's said Application No. 13323; and notwithstanding the further fact that plaintiff's engineer, who was also chief engineer for the Commission for nine years and who was likewise a party to said joint report, testified before the Commission on plaintiff's said Application No. 13323 that the value of plaintiff's operative property as of December 31, 1926, including a minimum allowance for going concern and working capital but not including any allowance for increased land values subsequent to 1923 and not including any allowance for development cost and franchise value, was the sum of, at least, $45,000,000; and notwithstanding the further fact that there was no evidence in the record before the Commission contradicting or refuting either the above agreed figures contained in said joint report or the above testimony of plaintiff's engineer as to the then present fair value of plaintiff's operative property, except only the arbitrary and unlawful estimate of the Commission engineers hereinabove in paragraph XIV referred to; yet, nevertheless, the Commission has discarded and disregarded all of said evidence and has found

as a fact that the reasonable rate base upon which a fair return upon plaintiff's operative property is to be computed in the year 1927 is $42,000,000, which figure, plaintiff alleges and the record shows is simply the rounded off historical reproduction cost figure as of December 31, 1926, contained in the following said arbitrary and unlawful estimate of the Commission engineer:

[fol. 58] Table No. 12

Total Operative Property as of December 31, 1926

	RCN	RCNLD	HRC
Total	$53,040,648	$36,159,547	$40,900,951
Material & Supplies	756,142	756,142	756,142
Total	53,796,790	36,915,689	41,657,093
Work in Progress	244,959	271,959	256,959
Total	54,041,749	37,187,648	41,914,052

In this connection plaintiff alleges that there was and is no evidence in the record before the Commission to support said finding number one except the figures shown in the above Table No. 12 which as aforesaid were introduced in evidence before the Commission by the Commission engineer, and that the figures contained in said Table No. 12 were and are arbitrary, erroneous, incorrect, and unlawful and were and are not lawful or any evidence of the then present fair value of plaintiff's operative property in that said figures did not and do not take into account or make any allowance for working capital, going concern, development cost, franchise value or the so-called unagreed items referred to in said joint report, all of which plaintiff alleges are elements proper and lawful to be considered in arriving at fair value, and further in that in said figures certain of plaintiff's overhead allowances were and are arbitrarily reduced over one million dollars from the figures agreed upon therefor in said joint report.

XXIV

Said Decision and Order No. 19521 is arbitrary, confiscatory and void in that it is found as a fact therein:

[fol. 59] "2. That the financial results from the operation of applicant's property under present operating methods,

for the year 1927, based upon estimates contained in the record, may be fairly stated as follows:

Total operating revenues	$13,254,000
Total operating expenses, including depreciation, computed on a 5% sinking fund basis, and taxes	11,183,739
Net income available for return	2,070,261"

Said finding is arbitrary, incorrect, misleading and confiscatory and the estimated financial results therein referred to are not "fairly stated" but said finding and said results are contrary to the evidence and without support in the record. In May, 1921, the Commission ordered (Decision No. 9025) that the depreciation on plaintiff's property be computed in accordance with rates of depreciation jointly determined upon by the Commission's engineer and the engineer of the city of Los Angeles and that plaintiff set aside for depreciation the sum of $60,000 per month or $720,000 per year. Ever since said time plaintiff has measured and computed depreciation on its properities on the straight line method in accordance with said requirements of the Commission, yet notwithstanding said fact and notwithstanding the further fact that in the joint report above referred to the engineers for the Commission, the city of Los Angeles, and plaintiff agreed that straight line depreciation was the proper basis upon which the depreciation of plaintiff's properties should be computed, and notwithstanding the further fact that until the present proceeding the Commission has always required depreciation of street railway properties to be computed on the straight line basis, nevertheless in said proceeding (Application No. 13323) the Commission, as clearly appears from the record and in order to use its assistant engineer's valuation figure of historical reproduction cost, has arbitrarily, [fol. 60] erroneously and unlawfully figured the allowance for depreciation of plaintiff's operating expenses on the sinking fund basis, based upon historical reproduction cost and not upon reproduction cost new, and has chosen that basis for reflecting the alleged financial results of plaintiff's operations for the year 1927 as set forth in the above finding, all of which is clearly apparent from the following

arbitrary and unlawful estimate compiled by the Commission's present engineer and offered in evidence in this proceeding (Application No. 13323), as hereinabove in paragraph XIV alleged and referred to:

Table No. 13

Estimate by Commission's Chief Engineer, A. G. Mott (Ex. 64, p. 2)

Estimated Financial Results of Operation—Year 1927

	Based on H. R. C. 5% sinking fund, depreciation	Based on H. R. C. L. D., straight-line depreciation	Based on Straight line, R. C. N. L. D., depreciation
Operating Revenue	$13,254,000	$13,254,000	$13,254,000
Operating Expense:			
Expense	9,368,533	9,368,533	9,368,533
Depreciation	979,200	1,556,917	2,013,091
Total Expense	$10,347,742	$10,925,450	$11,381,624
Net Operating Revenue	2,906,258	2,328,550	1,872,376
Taxes	835,997	835,997	835,997
Rent	.....	.....	.....
Operating Income	2,070,261	1,492,553	1,036,379
Basis for Computing return	41,914,052	31,112,871	37,341,571
Return	4.9%	4.8%	2.8%
[fol. 61] Increase in gross revenue necessary to net a			
6% return	715,840	502,820	1,414,982
7% return	1,227,245	882,437	1,870,596
8% return	1,738,650	1,262,052	2,326,211

Explanatory Note

Column 1.—Statement of the results of operation and rate of return, using a historical reproduction cost undepreciated for a rate base, and a 5% sinking fund annuity for depreciation, calculated on the historical reproduction cost.

Column 2.—Statement of results of operation and rate return using the historical reproduction cost depreciated as a rate base and a straight line annuity for depreciation calculated upon the historical reproduction cost.

Column 3.—Statement of results of operation and rate of

return using the reproduction cost new depreciated as a rate base and a straight line annuity for depreciation calculated upon the reproduction cost new."

In this connection plaintiff further alleges as aforesaid, that there was and is no evidence in the record before the Commission in support of said finding two and the financial results shown therein, except only the above arbitrary and unlawful estimate of the Commission engineer set forth in the said Table No. 13, and that said estimate is as aforesaid, arbitrary, erroneous, incorrect, and unlawful and is not lawful or any evidence of the then fair value of plaintiff's operative property for the following reasons:

1. Said estimate failed to take into consideration or to make any allowance for working capital, going value or development cost or the so-called unagreed items referred to in the joint report, all of which plaintiff alleges are [fol. 62] proper and lawful elements to be considered in arriving at fair value.

2. Said estimate arbitrarily and without reason, explanation, justification or cause reduced certain of plaintiff's overhead allowances more than one million dollars below the figures agreed upon therefor in the joint report.

And further in this connection plaintiff alleges that in figuring depreciation on its properties on the straight line method, as hereinbefore alleged, plaintiff has always been controlled therein by actual physical inspection of its various properties; that its evidence before the Commission on the question of depreciation, as applied both to valuations and to operating expenses, was upon said straight line method based on actual physical examination of the properties; that the depreciated valuation in said joint report was also on the straight line method, based likewise on actual physical inspection of the properties; that since said Joint Report no physical examination of plaintiff's properties to determine the extent of depreciation thereon has been made by any of the engineers of the Commission or of the city of Los Angeles or by any person other than plaintiff's engineers, and that such figures as were introduced in evidence by the Commission's and the city's engineers on or involving depreciation were and are purely theoretical and based solely upon theory and conjecture.

Plaintiff alleges further that in using the 5% sinking fund method of computing the amount to be allowed for depreciation in plaintiff's annual operating expenses the Commission acted upon the fundamentally and inherently erroneous principle that property theretofore depreciated on the straight line basis can or should be restricted in its allowance for annual operating expenses to depreciation figured on the 5% sinking fund basis.

XXV

Said Decision and Order No. 19521 is arbitrary, confiscatory and void in that it finds as a fact:

[fol. 63] "3. That the average annual rate of return earned by the applicant for the five year period ending December 31st, 1926, has been approximately 7.1%."

Said finding of fact is contrary to the evidence and without support in the record in that it is based upon, and the alleged average rate of return therein set forth is taken from, the following table in the concurring opinion of Commissioner Carr (see Exhibit "D," Appendix):

Table No. 14

"Return by Years

Year	Approximate value on basis of value found for 1927	Net income adjusted for 5% sinking fund depreciation	Per cent return
1913	$22,700,000	$1,830,000	8.1
1914	23,700,000	1,680,000	7.1
1915	24,500,000	1,290,000	5.3
1916	25,200,000	1,280,000	5.1
1917	25,500,000	1,190,000	4.7
1918	25,800,000	730,000	2.8
1919	26,100,000	860,000	3.3
1920	27,000,000	1,600,000	5.9
1921	28,500,000	1,770,000	6.2
1922	31,400,000	3,040,000	9.7
1923	34,800,000	3,280,000	9.4
1924	38,800,000	2,880,000	7.4
1925	39,900,000	2,090,000	5.2
1926	41,200,000	1,910,000	4.6
1927*	42,000,000	2,070,000*	4.9
Average for 15-year period			6.0
Average for last seven years			6.6

*1927 operations are in part based upon estimates."

[fol. 64] and said finding and said table are arbitrary, inaccurate, erroneous, directly contrary to the facts and contrary to the evidence and without support in the record in that all of the figures set forth in said Table 14 under the headings "Approproximate Value on Basis of Value Found for 1927" and "Net Income Adjusted for 5% Sinking Fund Depreciation" are based and predicated upon and taken from the arbitrary and unlawful estimates of the Commission engineer (Tables 12 and 13 herein), which said estimates, as hereinabove in paragraphs XIV and XXIV alleged and for the reasons therein stated, were and are not lawful or any evidence of the then present value of plaintiff's operative property.

Plaintiff alleges that the "Per Cent Return" figures shown in said table are based upon and calculated upon the two preceding columns "Approximate Value on Basis of Value Found for 1927" and "Net Income Adjusted for 5% Sinking Fund Depreciation"; that said "Approximate Value" figures are based and predicated upon said fundamentally erroneous theory that historical reproduction cost is the controlling element in the valuation of plaintiff's property; that said "Net Income" column is based and predicated upon the said fundamentally erroneous theory that sinking fund depreciation can now be applied to plaintiff's property which has always been depreciated on the straight line basis; and that such "Approximate Value" figures for each of the fifteen years shown in said table are, as hereinabove alleged and for the reasons therein stated, arbitrary, unlawful, directly contrary to the facts and contrary to the evidence and without support in the record.

Said finding and said "Return by Years" table is further contrary to the evidence and without support in the record in that there is no testimony or evidence of any kind whatsoever in the record before the Commission concerning any of the years specified therein prior to the year 1922 and there is no testimony or evidence whatsoever in the record [fol. 65] as to any of the figures set forth in said table prior to said year 1922.

Plaintiff alleges that said finding and the figures in said Table No. 14 are further contrary to the facts and the evidence and without support in the record in that during each and all of the years purported to be covered by said table it rendered to the Commission in accordance with the requirements of the Public Utilities Act, annual reports of

its operating revenues and expenses, in which it set forth respectively its actual net income for each of said years; that the amounts set forth in said annual reports are true and correct and are the actual figures from plaintiff's books of account; that for each of said years plaintiff's actual net income, as shown in said reports, was substantially less than the respective amounts shown on the Commission's said table and that said actual net income for said years is shown in Table No. 15 below.

There was also in evidence before the Commission the report of its own accountant, T. G. Hughes, (Commission Exhibit No. 49), who had during the course of the proceeding made an exhaustive investigation into plaintiff's accounts. The net income available for return as found and as testified to by said accountant Hughes for each of the twelve years during 1915 to 1926, inclusive, is also shown in said Table No. 15.

Table No. 15

Plaintiff's Net Income Available for Return, 1915-1926, as Shown in Annual Reports to Commission and in Commission's Exhibit No. 49 by T. G. Hughes

Year	As per annual report	As per T. G. Hughes
1915	$1,558,691	$1,559,247
1916	1,562,116	1,565,532
1917	1,304,057	1,305,745
1918	788,480	788,480
[fol. 66] 1919	864,975	864,975
1920	1,389,609	1,389,609
1921	1,408,939	1,417,315
1922	2,686,227	2,686,227
1923	2,897,219	2,896,492
1924	2,374,924	2,374,451
1925	1,524,414	1,539,048
1926	1,282,558	1,291,980

Notwithstanding such facts, however, and the further fact that in each of said annual reports to the Commission plaintiff also set forth its respective actual operating expenses, including depreciation upon the straight line basis, the concurring Commissioner, in said table and without any

justification therefor and without any testimony of evidence justifying or supporting such action, has arbitrarily substantially reduced said actual operating expense figure for each of said years by including therein a 5% sinking fund depreciation allowance based on historical reproduction cost and has thereby shown in said table "Net Income" and "Per Cent Return" figures which are not in accordance with the facts, which are not in accordance with the agreed joint report, and which are not in accordance with the methods which until now the Commission has required, but which are substantially greater in each instance than the actual figures therefor and the figures in evidence before the Commission by the testimony of both plaintiff's witnesses and the Commission's accountant Hughes.

And said finding number three is further arbitrary, inaccurate, misleading and confiscatory in that the Commission has arbitrarily chosen from said arbitrary and incorrect Table No. 14, as representative and as average of plaintiff's return, the five years which would include, according to said table, the two years in which plaintiff is purported to have earned its greatest return, and has arbitrarily excluded the year 1927 in which, according to said table, plaintiff's return was only 4.9%, and has failed to recognize and find as a fact that even according to said arbitrary and incorrect table plaintiff's average rate of [fol. 67] return even on the Commission's own unlawful, erroneous and inadequate rate base has, for the five years ending December 31, 1927, been only 6.2%, and for the entire fifteen years from 1913 to 1927, inclusive, has been only 6% on such rate base, and for the last seven years has been only 6.6% on such rate base. In this connection plaintiff alleges, and the uncontradicted evidence in the record before the Commission shows, that plaintiff's actual net income available for return, after actual operating expenses, for the five year period ending December 31, 1926, and computed on the annual rate bases shown in the joint report without any allowance whatever for working capital, going value, or development cost and without reasonable or adequate allowance for overhead expenses, averaged less than 5.8% per year on such inadequate valuation; and that upon the minimum fair value of plaintiff's operative property and upon actual operating revenues and expenses for each of said years, plaintiff in the five year period ending December 31, 1927, earned an average return of only 4.28%,

and failed to earn a fair return of 8% over such five-year period in the aggregate amount of $8,269,645, all as shown in the following table:

Table No. 16

Deficiency of Earnings Below an 8% Return on Minimum Fair Value of Plaintiff's Operative Properties, 1923 to 1927

Year	Minimum fair value	8%	Return		
			Actual	%	Deficiency
1923	$40,000,000*	$3,200,000	$2,897,219	7.24	$302,781
1924	44,000,000*	3,520,000	2,374,924	5.40	1,145,076
1925	45,000,000*	3,600,000	1,524,414	3.39	2,075,586
1926	46,000,000	3,680,000	1,282,588	2.79	2,397,443
1927	47,000,000	3,760,000	1,411,241	3.00	2,348,759

Average return for 5 years, 4.28%.
Total deficiency for 5 years, $8,269,645.

[fol. 68] XXVI

Said Decision and Order No. 19521 is, and shows on its face that it is, arbitrary, confiscatory and void in that it is found as a fact therein:

"4. That the rate of return earned by applicant under existing fares and methods of operation for the year ending December 31, 1927, was approximately 4.9%.

And said finding four is contrary to the evidence and without support in the record before the Commission for the reason, as hereinabove in paragraph XIV and XXIV alleged, that the rate of return therein found for the year 1927, to-wit, 4.9%, was arbitrarily taken from the Commission engineer's said arbitrary erroneous and unlawful estimate (Table 13, Paragraph XXIV, supra) and was based solely upon said engineer's "historical-reproduction-cost-5%-sinking-fund-basis" figure of $41,914,052 rounded off to $42,000,000. Notwithstanding and in spite of such erroneous, incomplete, and inadequate rate base of $42,000,000 found by the Commission in its finding number one and notwithstanding and in spite of the Commission's erroneous, unfair and arbitrary use of sinking fund depreciation in said proceeding and notwithstanding such erroneous,

*Figure developed by deduction of net additions and betterments from subsequent year and rounding off to nearest million.

arbitrary and excessive estimate of "operating income," and assuming for the purpose of this allegation, that such erroneous figures and methods are correct, which plaintiff denies, yet nevertheless the evidence of the Commission's own chief engineer, set forth in said Table No. 13, shows that for the year 1927 plaintiff, under its existing rates of fare, failed by the sum of $715,840 of earning a return of 6% on said erroneous, incomplete and inadequate rate base figure of $42,000,000, and failed by the sum of $1,227,245 of earning a return of 7% thereon, and by the sum of $1,738,650 of earning a return of 8% thereon; and notwithstanding and in spite of such erroneous figures and methods and even assuming their correctness for the purpose of this allegation, yet nevertheless the Commission's said finding number four as aforesaid, shows on its face [fol. 69] that the present rates of fare even on the Commission's own erroneous rate base are confiscatory of plaintiff's property to the extent of at least a million and a quarter dollars per year or at the rate of approximately $3,500 per day.

Plaintiff alleges further that it was in evidence before the Commission that for the year 1926 the actual operating income of plaintiff available for return was $1,282,558, a figure which even on the Commission's erroneous and inadequate rate base of $42,000,000, is equivalent to a return of only 3%, and that the only other evidence before the Commission on that question was the testimony of its own accountant Hughes (Table 15, supra) that for the year 1926 plaintiff's operating income available for return was $1,291,980, a figure which even on the Commission's said erroneous and inadequate rate base of $42,000,000 was equivalent to a return of only 3.08%.

XXVII

Said Decision and Order No. 19521 is arbitrary, confiscatory and void in that it is found as a fact therein that:

"5. The record shows that the operating methods of the Company might be so changed as to result in large reductions in the cost of operation and still enable the Company to render efficient and adequate service. The management

of the Company has made no effort to take advantage of these possible economies which, if made effective, would result in the Company receiving a full and adequate return on the rate base heretofore named, to-wit: the sum of forty-two million dollars ($42,000,000.00). By reason of these facts, the rates of fare now charged by said Company are not unreasonable."

Said finding of fact in its first two sentences is arbitrary, inaccurate, misleading and contrary to the facts and the evidence, and in its last sentence is arbitrary, erroneous, confiscatory and contrary to the facts and the record.
[fol. 70] In this connection plaintiff alleges that, although there is nothing either in said Decision and Order No. 19521 or in the two concurring opinions thereto to indicate to what operating methods or economies the Commission referred, said finding refers, as is clearly disclosed by the record, to the unsupported opinion of the Commission's chief engineer, A. G. Mott, that plaintiff's operating costs could be greatly reduced by the 100% use on its system of cars operated by one man. Said opinion was expressed by said chief engineer at the hearing held by the Commission on August 9th, 1927, and, aside from the fact that plaintiff had not sufficient opportunity to put into effect or fairly to test such drastic and far reaching changes before the submission of the case, even had they been practical, which plaintiff denies, said opinion purported to be the result of a six weeks' investigation made by him of street railway conditions in the cities of Chicago, Kansas City, Indianapolis, Washington, D. C., Baltimore, Philadelphia, New York, Newark, N. J., Boston, Albany, Buffalo, Montreal, Quebec, Toronto, Cleveland, Detroit, Milwaukee, Minneapolis, St. Paul, Seattle and Portland, none of which, as plaintiff is advised and believes and therefore alleges and as the record shows is comparable to the city of Los Angeles either in size, population or density and congestion of traffic, and only one of which said cities, viz: Newark, N. J., is furnishing street railway service over an extended zone system without transfers, under complete one man car operation. And plaintiff alleges, and the record clearly shows, that such operating methods, viz., 100% one-man car operation in the city of Los Angeles, are and would be impractical, inefficient and inadequate to meet the traffic and transporta-

tion problem of said city and its inhabitants, and would not enable plaintiff to render safe, efficient and adequate service and would not result in large, or any material, reductions in the cost of operation. Plaintiff further alleges and the record shows and the Commission well knows that such methods would, if put into effect in said city, not only result in unsafe, inefficient, inadequate and unsatisfactory [fol. 71] street car service, but would require, in the conversion of the present equipment or the purchase of new equipment by plaintiff to meet such methods, capital expenditures in excess of a million dollars which plaintiff is not and will not in the present state of its credit and under its existing rates of fare, be able to finance.

Plaintiff further alleges that the city of Los Angeles claims jurisdiction to order one-man car operation in said city and that said city not only did not recommend or approve such type of service, but expressly and vigorously opposed it, as evidenced by resolution of its Board of Public Utilities and Transportation, and by a widespread expression of public opinion in opposition thereto.

XXVIII

Said Decision and Order No. 19521 is arbitrary, confiscatory, and void in that it finds as a fact

"6. That the schedule of fares applied for by applicant, to-wit: a seven (7) cent cash fare with four (4) single fare tokens for twenty-five (25) cents, may be reasonably expected to produce a gross revenue of approximately fifteen million seven hundred and eight thousand dollars ($15,708,000), and will, if permitted, produce a net annual return of 9.4 per cent upon the above rate base and the rates applied for, therefore, if put into effect, would be unjust and unreasonable."

Said finding is arbitrary, inaccurate, confiscatory and contrary to the facts and the record, in that it assumes, and said finding is based and predicated upon the assumption, that if plaintiff were authorized to charge and collect a seven cent cash fare with four single fare tokens for twenty-five cents, as applied for to the Commission in said Application No. 13323, its service and operating expenses

under said increased rates would remain the same as now exist under its present basic fare of five cents, whereas in truth and in fact, and as the record shows, the Commission itself required plaintiff at the hearings on said Application No. 13323 to stipulate with the Commission [fol. 72] that, in the event said rates were authorized, plaintiff would put into effect free universal local transfer service with the Pacific Electric Railway Company, and with the Los Angeles Motor Bus Company, which, as the Commission well knows, and the record shows, and plaintiff alleges to be the fact, would substantially increase plaintiff's service and would greatly increase plaintiff's operating expenses.

In this connection plaintiff alleges that by reason of the inadequate and insufficient revenue derived from its present rates of fare it was compelled during the year 1927 to curtail its normal operating expenses exclusive of taxes to the sum of $11,062,013, or approximately $250,000 below normal; that even if the rates applied for to the Commission in said Application No. 13323 had been authorized by the Commission and plaintiff had continued such curtailment of its operating expenses under said increased rates and without any allowance for the cost of installation of universal transfer demanded by the Commission, and without allowance for any increased service whatsoever, its operating income available for return for said year would have been $3,352,035, which is equivalent to a return of only 7.98% on the Commission's own erroneous and inadequate rate base figure of $42,000,000, and a return of only 7.13% on the minimum present fair value of plaintiff's property devoted to the public use. Plaintiff further alleges that if said increased rates had been authorized and put into effect its uncurtailed operating expenses, even without taking into account the cost of installation of said universal transfer plan, as required by the Commission, would have been $13,170,477, leaving a net income available for return for said year 1927 of $2,486,613, which is equivalent to a return of 5.92% on the Commission's said erroneous and inadequate rate base of $42,000,000, and a return of only 5.29% on the minimum present fair value of plaintiff's property devoted to the public service.

The following table sets forth plaintiff's estimated operating results for the year 1927 under the rates applied [fol. 73] for to the Commission and herein requested, and shows among other things the rate of return and the deficiency in earnings below 8% on plaintiff's property both under the Commission's erroneous and inadequate rate base of $42,000,000 and under the present fair value of plaintiff's property under both actual curtailed operations and under normal uncurtailed operations as increased by additional service due to universal transfers.

Table No. 17

Operating Results from Plaintiff's Proposed Fares for Year 1927 if Such Fares Had Been in Effect

Estimated 90% revenue passengers would use tokens (6¼c); 10% would pay 7c cash fare.
Curtailment of traffic 5%.

	Based on operating expenses	
	(1) Actual (curtailed service)	(2) Normal Plus increased service
(a) Total Operating Revenue	$15,657,090	$15,657,090
(b) Total Operating Expenses Exclusive Taxes.	11,062,013	12,051,055
(c) Net Revenue Railway Operations	4,595,077	3,606,035
(d) Taxes	1,243,042	1,119,422
(e) Operating Income (earnings available as a return)	3,352,035	2,486,613
(f) Present Value Plaintiff's Operative Property at least	47,000,000	47,000,000
(g) Percent of return on such value (f)	7.13%	5.29%
(h) 8% Return on such value (f) at least	3,760,000	3,760,000
[fol. 74] (i) Deficiency in Earnings below an 8% Return on such value (f) at least	407,965	1,273,387
(j) "Rate Base" fixed by California Railroad Commission (Historical Cost 1926)	42,000,000	42,000,000
(k) Perecent of Return on such value (j)	7.98%	5.92%
(l) 8% Return on such value (j) at least	3,360,000	3,360,000
(m) Deficiency in Earnings below an 8% Return on such value (j) at least	7,965	873,387

NOTE.—Operating expenses in both estimates above are based on present wages for platform and other employees, which undoubtedly will be increased.

The above estimates do not take into account cost of installing universal transfer as stipulated by plaintiff in accordance with Commission's requirement.

Plaintiff further alleges that if under normal operating conditions said basic fare of seven cents with four single fare tokens for twenty-five cents, as applied for to the Commission and as herein requested, were in effect and being charged and collected, plaintiff's operating income available for return, for the period ending twelve months after said rates became effective, would be the maximum sum of $2,641,088, which is equivalent to a return of only 6.29% on the Commission's own erroneous and inadequate rate base of $42,000,000, and a return of only 5.62% on the present minimum fair value of plaintiff's property devoted to the public service. The following table sets forth the details of such estimate:

[fol. 75] Table No. 18

Operating Results from Plaintiff's Proposed Fares for First 12 Months After Effective Date

Estimated 90% of revenue passengers will use tokens (6¼c); 10% will pay 7c cash fare.

Curtailment of traffic, 5%.

(a) Total Operating Revenue	$15,759,909
(b) Total Operating Expenses excluding Taxes	11,970,178
(c) Net Revenue Railway Operations	$3,789,731
(d) Taxes	1,148,643
(e) Operating Income (Earnings available as a return)	2,641,088
(f) Present value of Plaintiff's Operative property, at least	$47,000,000
(g) Per cent of return on such value (f)	5.62%
(h) 8% return on such value (f) at least	3,760,000
(i) Deficiency in earnings below an 8% return on such value (f) at least	1,118,912
(j) Rate base fixed by California Railroad Commission (historical cost 1926)	$42,000,000
(k) Per cent of return on such value (j)	6.29%
(l) 8% return on such value (j) at least	3,360,000
(m) Deficiency in earnings below an 8% return on such value (j) at least	718,912

Note

(1) Operating expenses based on present wages which undoubtedly will be increased.

(2) Above estimate takes no account of cost of installing universal transfer as stipulated by plaintiff in accordance with Commission's requirement.

XXIX

Plaintiff alleges and charges that the Commission, in making and entering said Decision and Order No. 19521 and in refusing to permit plaintiff to put into effect or to charge and collect just, reasonable, sufficient, compensatory [fol. 76] and non-confiscatory rates of fare, wholly disregarded the clear intent of the laws of the State of California as set forth in said Public Utilities Act (Section 32) that the rates of fare of plaintiff and other public utilities shall at all times be just, reasonable and sufficient; that the Commission, in making and entering said Decision and Order, did not, as hereinbefore alleged and shown, act upon findings based upon the evidence or upon any sustaining proof adduced at the hearings in said proceeding (Application No. 13323), but acted arbitrarily, without any fair or proper consideration of the evidence, without any proper or adequate proof to support its said findings or said Decision and Order, and without any authority of law, but in utter disregard and defiance of its powers and duties under said Public Utilities Act and of the rights of plaintiff under the Fifth and Fourteenth Amendments to the Constitution of the United States.

XXX

Immediate and irreparable injury, loss, and damage will result to plaintiff, as hereinabove alleged and shown, unless a temporary restraining order is granted without notice to the Commission, in this—that plaintiff is daily carrying over its street railway lines approximately 700,000 paying passengers; if these passengers are carried at plaintiff's present rates of fare and it is subsequently held by this court that said fares and said Decision and Order No. 19521, are illegal, confiscatory and void, and that plaintiff

is therefore entitled to charge the just, reasonable and compensatory rates herein proposed, it will be impossible for plaintiff ever to collect or recover from said passengers the difference between the rates of fare so collected and the rates of fare plaintiff was legally entitled to charge, collect and receive; and said difference amounting approximately to the sum of $7,000.00 per day will be irreparably lost to plaintiff before notice of an application for a temporary restraining order can be served and a hearing had thereon. [fol. 77] Wherefore, the premises considered and to the end that plaintiff may have that relief which it can obtain only in a court of equity, plaintiff hereby prays:

1. That the said Railroad Commission of the State of California, defendant herein, be summoned to appear and be required to make full and direct answer to this bill, but not under oath, answer under oath being hereby waived;

2. That it be ordered, adjudged and decreed:

(a) that plaintiff's existing rates of fare referred to and set forth in Exhibit "H" of this bill are unjust, unreasonable, confiscatory, void, and in violation of the Constitution of the United States;

(b) that Decision and Order No. 19521 of the Railroad Commission of the State of California dated March 26, 1928, is arbitrary, confiscatory, void and in violation of the Constitution of the United States;

(c) that said Decision and Order No. 19521 be vacated, set aside and for naught esteemed.

3. That it be ordered, adjudged and decreed that plaintiff has no adequate remedy at law for the injury which has resulted and will result from the enforcement of its present rates of fare and of said Decision and Order No. 19521, and that such injury is and will be irreparable.

4. That it be ordered, adjudged and decreed that the Railroad Commission of the State of California and its members, officers, attorneys, agents, servants and employees' and any and every person acting or claiming, assuming or attempting to act under and by virtue of the authority of said Commission, and any and all other persons, associations, or corporations, municipal or otherwise, who now or shall hereafter seek or attempt to enforce said

Decision and Order No. 19521 or plaintiff's existing rates of fare, or seek or attempt to take any steps or proceedings [fol. 78] whatsoever under or pursuant to or by virtue of said Decision and Order or otherwise, be perpetually enjoined from enforcing or attempting to enforce or from advising, instituting, prosecuting or aiding in any action, suit or proceeding, or otherwise, to enforce said existing rates of fare or said Decision and Order against plaintiff or otherwise, or against any of the officers, agents or employees of plaintiff or any of them, or from taking any steps or proceedings whatsoever under or pursuant to or by virtue of said Decision and Order or otherwise, or from advising, instituting, prosecuting or aiding any action, suit or proceeding of any kind or character under the laws of the State of California, or otherwise, to recover from or impose upon or enforce against plaintiff or any of its officers, agents or employes or any of them, any fine, penalty, damages or demand for failure or refusal to obey, observe or comply with said Decision and Order or to charge and collect said existing rates of fare; or from interfering with or attempting to interfere with or from advising, instituting, prosecuting or aiding in any act, action, suit or proceeding to interfere with, restrain or prevent plaintiff or any of its officers, agents or employees, or any of them, from putting into effect or from charging and/or collecting the rates of fare proposed by plaintiff in this bill.

5. That plaintiff have a temporary or interlocutory injunction issued against defendant Railroad Commission of the State of California upon five days notice to it of the intended application therefor enjoining and restraining it as hereinabove prayed pending the hearing of this cause and until the further order of this court.

6. That in order to prevent immediate and irreparable injury, loss and damage to plaintiff and the said continuing confiscation of its property as hereinabove set forth a temporary restraining order be issued at once without notice restraining as hereinabove prayed in subdivision 4 of this prayer, the said defendant Railroad Commission and all other persons named in said subdivision until a day to be [fol. 79] set by this court, and until the hearing and determination of the application herein for a temporary or interlocutory injunction upon notice.

7. That plaintiff may have such other and further or different relief as may be equitable and proper to protect fully the rights of plaintiff in the premises, and as to the court may seem meet.

May it please your Honors to grant unto plaintiff a writ of subpœna ad respondendum, issuing out of and under the seal of this court, to be directed to the said defendant Railroad Commission of the State of California commanding it, on a certain day and under certain penalty to be therein inserted, to appear before your Honors in this Honorable Court and then and there full, true, direct and perfect answer to make to all and singular the premises, and further to stand, do, perform and abide by such further order and decree as to your Honors may seem meet;

and may it please your Honors to grant unto plaintiff a writ of injunction to be directed to the said defendant Railroad Commission of the State of California and all other persons as above prayed perpetually enjoining them as hereinabove prayed;

to grant unto plaintiff, upon five days notice to said defendant Railroad Commission of the intended application therefor, a temporary or interlocutory injunction similarly directed and restraining and enjoining said defendant and all other persons as hereinabove prayed during the pendency of the hearing of this cause and until the further order of this court;

and to grant unto plaintiff a temporary restraining order without notice similarly directed and restraining said defendant Railroad Commission of the State of California and all other persons as hereinabove prayed until a day to be set by this court and until the hearing and determination of the application herein for a temporary or interlocutory [fol. 80] injunction as hereinabove prayed and upon the grounds hereinabove set forth.

Dated Los Angeles, California, this 27th day of June, 1928.

Los Angeles Railway Corporation, by Gibson, Dunn & Crutcher, by S. M. Haskins, Its Solicitor. Woodward M. Taylor, Paul R. Watkins, of Counsel.

Duly sworn to by George J. Kuhrts. Jurat omitted in printing.

[fol. 81] EXHIBIT "A" TO COMPLAINT

Application No. 13323

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

No. 13323

In the Matter of the Application of LOS ANGELES RAILWAY CORPORATION, a Corporation, for an Order Readjusting Rates and Establishing Just and Reasonable Rates for the Transportation of Persons on the Company's lines in the State of California

Application

The petition of the Los Angeles Railway Corporation, a corporation, respectfully shows:

I

That applicant is a corporation incorporated and existing under and by virtue of the laws of the State of California, with its principal place of business and its postoffice address in the City of Los Angeles, County of Los Angeles, State of California, and that Gibson, Dunn & Crutcher, whose address is in the City of Los Angeles, California, are its attorneys.

II

That a certified copy of its Articles of Incorporation has heretofore been filed with the Railroad Commission of the State of California in previous proceedings.

III

That applicant is engaged in the business of operating a transportation system consisting of electric railway and motor bus lines extending over more than 400 miles of single track electric railway and more than 50 miles of bus routes in and between the cities of Los Angeles, Eagle Rock, Hawthorne, Inglewood and Huntington Park in Los Angeles County, State of California, which system has as its principal source of operating revenue urban and suburban passenger traffic.

IV

That it is impossible to state with accuracy the original cost of applicant's property used and useful in the service of the public, because applicant and its predecessors in interest were formed by consolidation of certain existing corporations and because such records of such predecessors as have come into the possession of your applicant are incomplete and inadequate to reffect with accuracy such original cost.

[fol. 82]

V

That the present fair value of the properties of applicant used and useful in the operation of its railroad and transportation business for the public service, without any allowance for capital expenditures to be made in the near future, is, at the lowest reasonable valuation, in excess of forty-five million dollars ($45,000,000).

VI

That applicant is under the immediate necessity of making large capital expenditures for the improvement and extension of its service to the public, which expenditures in various amounts and during a period of approximately 3 years from the end of the present year will total in excess of six million dollars ($6,000,000), as more fully appears in the detailed statement, marked Statement "A," and attached hereto and made a part hereof.

VII

Attached hereto and made a part hereof is the financial statement of Los Angeles Railway Corporation as of June 30, 1926, constituted as follows:

(a) A statement marked "B" showing the amount and kinds of stock authorized and amounts and kinds of stock issued and outstanding as of September 30, 1926, and the rate and amount of dividends paid thereon since the date of incorporation November 7, 1910.

(b) Statement "C" of Mortgages, giving a brief description of each mortgage upon the property of applicant, giving date of execution, name of mortgagor, name of mort-

gagee or trustee, and the amount of indebtedness actually secured, together with any sinking fund provision.

(c) Statement marked "D" showing the number and amount of bonds authorized and issued as of Sept. 30, 1926, giving the date of issue, par value, rate of interest, date of maturity, how secured, together with a statement showing status of interest and sinking fund payments.

(d) Also a statement marked "E" showing the other indebtedness of your applicant, giving the name and classes, rates of interest and description of security, if any.

(e) Also a statement marked "F" showing your applicant's balance sheet as of September 30, 1926.

[fol. 83] (f) Also included and marked Statement "G" are income and profit and loss statements of applicant as of September 30, 1926, for the period of January 1 to September 30, 1926, and a similar statement as of December 31, 1925, for the calendar year 1925.

(g) Reference is also made to applicant's annual report for the year 1925, which has already been filed with Your Honorable Commission, showing in detail the earnings and expenditures for the year referred to and the financial condition of your applicant at the end of the calendar year 1925.

(h) Reference is also made to the "Joint Report on Street Railway Survey City of Los Angeles, 1925," heretofore filed with Your Honorable Commission, and particularly to

Table II, page 79, Extensions and Total Investment Road and Equipment, (as shown by Company Books).

Table IV, page 95, Changes in Service, Operating and Financial Conditions of Los Angeles Railway 1918 to 1925, inclusive, (including bus operation).

Table V, page 101, Comparative Statement of Revenue and Expense.

Table VI, page 104, Comparative Table Showing Increases in Operating Revenue, Revenue Passengers and Car Miles Operated.

Table VII, page 106, Railway Operating Revenues.

Table VIII, page 108, Railway Operating Expenses—Recapitulation of Expenses.

Table IX, page 110, Railway Operating Expenses, I. Way and Structures.

Table X, page 111, Railway Operating Expenses, II. Equipment.

Table XI, page 112, Railway Operating Expenses, IV. Conducting Transportation.

Table XII, page 113, Railway Operating Expenses, VI. General and Miscellaneous.

These tables are reproduced and brought forward to December 31, 1925, and attached hereto as Statement "H."

VII

The operating income of applicant for the year 1925 in spite of efficient and economical operation was $1,524,414.04 and fell short by at least $2,000,000 to produce a fair return of 8% after operating expenses, taxes and depreciation, upon a conservative estimate of the present fair value of applicant's property used and useful in the service of the public without any allowance for any return upon capital expenditures to be made in the immediate future; and fell [fol. 84] short by at least $1,600,000 of earning a fair return of 7% upon such minimum fair property value.

Taking into account such depreciation only as was actually charged upon applicant's books, the annual report for the year 1925 shows that the amount of revenue available for fair return, that is to say for bond interest, other fixed charges, sinking funds, and surplus amounted for that year to $1,524,414.04, being a "fair return" of less than 3.4% upon a property value of $45,000,000.

VIII

That applicant estimates that in spite of efficient and economical operation the revenue to be derived from the operation of its said properties in its service to the public in the present year 1926, will show an even smaller return on a fair rate base by reason mainly of the fact of increased service required by the public and consequent increased operating costs and by reason of the large capital expenditures required in the immediate future, which capital expenditures will in part only produce additional revenue.

IX

That applicant alleges that the return as stated above for the year 1925 and as estimated with great certainty for the year 1926, is not a fair and compensatory or non-confiscatory return on the fair value of its property used and useful in the service to the public and is greatly below the minimum figure which would constitute such fair return or adequate compensation.

The actual cost to applicant of the money at present invested in applicant's operative property used and useful in said service, under current interest rates, is not less than 6½% and the return actually earned by applicant in the present year and in the previous year and the return possible to be earned in the future under present rates is greatly below the actual cost of the money invested in said public service and is unfair, confiscatory and non-compensatory, and constitutes a confiscation and taking of the property of applicant without due process of law and in violation of the Fourteenth Amendment to the Constitution of the United States.

That the present rates now in effect over applicant's lines are set forth in schedules heretofore approved by and on file with Your Honorable Commission in conformity with the requirements of the Public Utilities Act of the State of [fol. 85] California and the rules of Your Honorable Commission, to which schedules reference is hereby made and the same are by reference made a part of this application.

XI

That the established rates, charges and fares of applicant are insufficient and inadequate to produce, after reasonable operating expenses, a just and fair return upon the fair value of applicant's property used and useful in the public service and are so low and inadequate as to be unjust, unreasonable, confiscatory and non-compensatory and that such rates, charges and fares if continued in the future will continue to provide an inadequate and unfair return to applicant upon the fair value of its property dedicated to the service of the public.

XII

That there is attached hereto as Statement "I" and made a part hereof a schedule of rates which is hereby filed with your Honorable Commission with the request for approval and authorization to make said schedule effective at the earliest possible date. This schedule is based upon a 7¢ basic rate with the sale of four single fare tokens for 25¢, including free transfer privilege, and upon adjustment of interurban and other fares as shown in Statement "I."

XIII

That applicant believes and avers that the making effective of the proposed rate schedule referred to in the preceding paragraph will, in the twelve months following the effective date, produce a total transportation revenue of approximately $14,368,000 which is an increase over the 1925 transportation revenue of approximately $1,660,000. If this estimated gross revenue is realized it will result in an estimated return after reasonable operating expenses and taxes of somewhat less than $3,000,000, or less than 7% on a present fair value of $45,000,000 of the property used and useful in the public service without any allowance for new capital invested subsequent to the present year.

XIV

That applicant believes and avers that it is now furnishing and has in the past furnished to its patrons and to the communities served by its system the best possible transportation service at or below the lowest possible reasonable cost and applicant now states that it is its desire and purpose at all times in the future to continue the best possible transportation service. Applicant believes and avers [fol. 86] that the high character and the value of its service to its patrons and to the communities served is unquestioned and is fully established and entirely justifies the fixing of rates as prayed for in the preceding paragraph, and that the granting of such rates will provide no more than the actual reasonable cost of service under efficient and economical management and operation and in addition a return of less than 7% upon a fair, just and reasonable rate base.

Wherefore applicant prays that Your Honorable Commission make an early examination and investigation of its rate and service schedules and of the other matters referred to in this application and make an order authorizing the establishing and collecting of the rates as heretofore prayed for in this application and as shall be found by Your Honorable Commission to be just and reasonable, compensatory and non-confiscatory and shall provide revenue sufficient to meet operating expenses, depreciation charges, taxes and provide a fair and reasonable return upon the fair value of its property used and useful in the service of the public estimated upon a just and fair rate base, and for such order as may be just and reasonable.

Los Angeles Railway Corporation, by George J. Kuhrts, Vice-President and General Manager. Gibson, Dunn & Crutcher, by S. M. Haskins, Attorneys for Applicant.

Dated Los Angeles, California, November 16, 1926.

Attached

Statement A—Necessary and Proposed Capital Expenditures for 3 years period 1927 to 1929, inclusive.

Statement B—Capital stock of Applicant Issued and Outstanding.

Statement C—Mortgages of Applicant.

Statement D—Authorized and Issued Bonds.

[fol. 87] Statement E—Other Indebtedness.

Statement F—Balance Sheet as of August 31, 1926.

Statement G—Income and Profit and Loss Statements as of August 31, 1926, for the period January 1 to August 31, 1926, and similar statement for the calendar year 1925.

Statement H—Tables taken from Joint Report on Street Railway Survey City of Los Angeles, 1925, and brought forward to December 31, 1925, as follows:

Table II—page 79, Extensions and Total Investment Road and Equipment, (as shown by Company Books).

Table IV—page 95, Changes in Service, Operating and Financial Conditions of Los Angeles Railway 1918 to 1925, inclusive, (including bus operation).

Table V—page 101, Comparative Statement of Revenue and Expense.

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Table VII—page 106, Railway Operating Revenues.

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Table IX—page 110, Railway Operating Expenses. I. Way and Structures.

Table X—page 111, Railway Operating Expenses. II. Equipment.

Table XI—page 112, Railway Operating Expenses. IV. Conducting Transportation.

Table XII—page 113, Railway Operating Expenses. VI. General and Miscellaneous.

Statement I—Schedule of Proposed Rates.

[fol. 88] Statement "A"

Proposed Capital Expenditures for 3-year Period, 1927 to 1929, Inclusive

Items		Amounts
I. Way and Structures:		
(1) Track Reconstruction	$1,262,675	
(2) Extentions, including special work.	751,703	
(3) New Viaducts	688,084	
(4) Land for Dump Tracks	75,000	
(5) Renewals, Divisions 1, 2, 3, 5	20,700	
(6) 16th Street Yards (Bus and automobile headquarters) Extensions, additions and betterments	422,762	
(7) South Park Shops, additions to Property	37,594	
(8) Electric distribution system:		
Positive & negative feeders	125,735	
15,000 volt high lines	131,147	
Poles and fixtures	38,227	
(9) Transformers and motors for shop power and light	17,865	
(10) Office Equipment	6,000	
(11) Roadway machinery and tools	39,855	
Sub-total		$3,617,347
II. Equipment:		
(1) 100 new passenger cars replacing 100 old cars $8,000 per car to capital	800,000	
(2) Miscellaneous and service equipment	45,430	

Statement "A"—Continued

Items		Amounts
(3) Electric equipment of cars (motor housing changes, fare boxes)	80,220	
(4) Busses:		
45 Single Deck busses @ $8,700	391,500	
30 Double Deck busses @ $11,500	345,000	
(5) Shop Equipment	68,057	
Sub-total		$1,730,207

Sheet 2 of 2 Sheets

Amt. forward		$5,347,554
III. Power:		
(1) Present Substations—Additions and Betterments	$390,036	
(2) Supervisory control system	84,375	
(3) New Substation "S" Manchester and Broadway:		
1000 KW Set and 4 feeder panels, building & land	108,940	
[fol. 89] (4) New Substation "I" Inglewood:		
2500 KW Sets, 2 feeder panels, building & land	76,465	
(5) New Substation "R" West Adams and Vineyard:		
1000 KW Set, 4 feeder panels, building & land	116,740	
Sub-total		776,556
Grand Total		$6,124,110

R. S.—11/15/26.

[fol. 90]

Statement "B"

Los Angeles Railway Corporation

Financial Statement, September 30, 1926

Amount and kind of stock authorized: Common Stock	$20,000,000.00
Amount and kind of stock issued and outstanding: Common Stock	$20,000,000.00

Dividends Paid Since Date of Incorporation, November 7, 1910

Year	Rate	Cash or bonds	Amount
July 1911.	2%	(City Railway Co. Bonds)	$400,000.00
Aug. 1912.	2%	(" " " ")	400,000.00
Feb. 1913.	2%	(" " " ")	400,000.00
Dec. 1913.	1½%	(" " " ")	300,000.00
			$1,500,000.00

[fol. 91] Statement "C"

Statement of Bonded Indebtedness

As of September 30, 1926, there are bonds outstanding secured by mortgages against the railway properties covered in this application in the net amount of $21,124,000.00.

A Statement showing details of each of the outstanding bond issues follows:

Mortgages

(1) Name of Mortgagor: Los Angeles Traction Company.
Description of Mortgage: First consolidated mortgage.
Date of Execution: December 1st, 1898.
Trustee: St. Louis Trust Company.
Date of Maturity: December 1st, 1938.
Rate of Interest: 5%.
Par Value: $1,000.00.
Interest paid year 1925: $12,500.00.
Amount authorized: $500,000.00.
Amount outstanding: $250,000.00.
Sinking Fund Provisions: None.

(2) Name of Mortgagor: Los Angeles Railway Company.
Description of Mortgage: First Mortgage.
Date of execution: January 17th, 1899.
Trustee: Union Trust Company of San Francisco.
Date of Maturity: October 1st, 1938.
Rate of Interest: 5%.
Par Value: $1,000.00.
Interest paid year 1925: $236,100.00.
Amount authorized: $5,000,000.00.
Amount outstanding: $4,722,000.00.
Sinking Fund provisions: Beginning 1903 and each year thereafter for five years $15,000.00, the five year periods thereafter until maturity requiring increase of $5,000.00 yearly, proceeds to be used in acquiring and cancelling bonds of this issue.

(3) Name of Mortgagor: Los Angeles Railway Corporation.

Description of Mortgage: First and refunding.
Date of execution: November 21st, 1910.
Trustee: Pacific Southwest Trust & Savings Bank.
Date of Maturity: December 1st, 1940.
Rate of Interest: 5%.
[fol. 92] Par Value: $1,000.00.
Interest paid year 1925: $745,675.00.
Amount authorized: $20,000,000.00.
Amount outstanding: $12,389,000.00.

In Sinking Fund	$2,491,000.00
In Treasury	5,120,000.00
In hands of Public	12,389,000.00
	$20,000,000.00

Sinking Fund Provisions: Payments of $10,000.00 monthly in cash or bonds to Trustee, Bonds to be kept alive.

(4) Name of Mortgagor: City Railway Company of Los Angeles.
Description of Mortgage: First Mortgage.
Date of Execution: February 1st, 1911.
Trustee: Pacific Southwest Trust & Savings Bank.
Date of Maturity: February 1st, 1941.
Rate of Interest: 5%.
Par Value: $1,000.00.
Interest Paid in year 1925: $51,000.00.
Amount authorized: $5,000,000.00.
Amount outstanding: $3,763,000.00.

In Sinking Fund	$1,237,000.00
In hands of Public	3,763,000.00
	$5,000,000.00

Sinking Fund provisions: Two percent of amount of Bonds outstanding January of each year. Bonds purchased for Fund to remain alive.

[fol. 93] Statement "D"

Los Angeles Railway Corporation and City Railway Company of Los Angeles

Consolidated Statement of Funded Debt, September 30, 1926

Funded Debt:		
Los Angeles Traction Company	$250,000.00	
Los Angeles Railway Company	4,722,000.00	
Los Angeles Railway Corporation	14,880,000.00	
City Railway Company of Los Angeles	5,000,000.00	
		24,852,000.00
Less Bonds in Sinking Funds:		
Los Angeles Railway Corporation	2,491,000.00	
City Railway Company of Los Angeles	1,237,000.00	
		3,728,000.00
Total Funded Debt		$21,124,000.00

[fol. 94]

Statement "E"

Los Angeles Railway Corporation & City Railway Company of Los Angeles

Floating Debt, September 30, 1926

Loans and Notes Payable

(Los Angeles Railway Corporation Notes)

Date of note	In favor of	Date due	Rate of int.	Amount
Jan. 27, 1922.	Pacific Mutual Life Ins. Co	1/27/27	6%	$400,000.00
July 15, 1926.	First National Bank	10/13/26	5%	100,000.00
" 26, "	"	10/24/26	"	200,000.00
Aug. 14, "	"	11/12/26	"	100,000.00
Sept. 9, "	"	12/ 8/26	"	100,000.00
Jan. 1, 1925.	H. E. Huntington	1/ 2/25	"	100,000.00
Mar. 1, "	"	3/ 2/25	"	67,000.00
July 12, 1926.	"	6/12/27	"	500,000.00
June 15, "	"	12/15/26	"	222,000.00
Feb. 1, 1923.	Huntington Land & Impr. Co	8/ 1/23	6%	487,000.00
May 21, "	"	6/ 1/23	"	78,000.00
Jan. 2, 1924.	"	1/ 3/24	"	100,000.00
" 2, "	"	1/ 3/24	"	100,000.00
" 29, "	"	7/29/24	"	200,000.00
Aug. 31, "	"	8/14/24	"	200,000.00

Statement "E"—Continued

Date of note	In favor of	Date due	Rate of int.	Amount	
Jan. 29, 1925.	"	1/30/25	"	200,000.00	
Mar. 16, "	"	3/17/25	"	38,232.64	
Aug. 13, 1924.	Redondo Improvement Co	8/14/24	"	100,000.00	
Feb. 6, 1926.	U. S. Steel Products Co	2/ 5/27	"	64,261.20	
					3,356,493.84

(City Railway Co. of Los Angeles Notes)

Sept. 11, 1926.	Bethlehem Steel Co	8/11/27	6%	50,095.99	
Nov. 23, 1925.	Fageol Motors Co	10/23/26	"	50,851.50	
Dec. 30, "	"	11/30/26	"	13,500.00	
Dec. 18, "	"	11/18/26	"	22,116.00	
June 21, 1926.	"	5/21/27	"	32,670.00	
Aug. 9, "	"	7/ 9/27	"	32,670.00	
Sept. 15, "	"	8/15/27	"	74,571.00	
July 18, "	First National Bank	10/16/26	5%	100,000.00	
Aug. 5, "	"	11/ 3/26	"	100,000.00	
" 9, "	"	11/ 7/26	"	100,000.00	
Sept. 15, "	"	12/14/26	"	100,000.00	
Apr. 12, "	Howard Automobile Co	12/11/26	6%	13,675.75	
Dec. 29, 1925.	Mack International Motor Truck Corp	11/29/26	"	24,600.00	

[fol. 95]

May 15, 1926.	"		... 4/15/27	"	13,343.45	
Mar. 17, "	Yellow Mfg. Sales Corp		2/17/27	"	50,067.40	
						778,161.09
	H. E. Huntington—Open Account					1,345,950.00
	Total Loans and Notes Payable					5,480,604.93
Other Accounts:						
Audited Accounts and Wages Payable						513,216.13
Bonus—Suspense						89,928.68
Miscellaneous						347.92
Bond Interest matured and unpaid						4,242,250.00
Accrued interest						297,833.33
Accrued taxes						57,229.06
Accrued Surplus Appropriation for Sinking Fund—Company Bond						486,970.83
Total						$11,168,380.88

Statement "F"

Los Angeles Railway Corporation

Consolidated Balance Sheet, September 30, 1926

Assets:	L. A. Ry. corp.	City Ry. Co.	Total
Investments:			
Road and Equipment	$50,207,691.98	$18,907,254.33	$69,114,946.31
Sinking Funds	2,531,336.40	1,278,316.69	3,809,653.09
Investment in Affiliated Cos	.....	.....	.....
Other Investments	6,000.00	.....	6,000.00
Total	$52,745,028.38	$20,185,571.02	$72,930,599.40
Current Assets:			
Cash	45,504.63	.....	45,504.63
Loans and Notes Receivable	8,918,642.63	.....	[1] 11,388.30
Accounts Receivable	86,630.41	.....	86,630.41
Material and Supplies	788,210.93	.....	788,210.93
Other Current Assts	38,806.77	.....	38,806.77
Total	$9,877,795.37	.....	$970,541.04
Deferred Assets	63,741.83	.....	63,741.83
Unadjusted Debits	220,184.52	.....	220,184.52
Total Assets	$62,906,750.10	$20,185,571.02	$74,185,066.79

Liabilities:			
Capital Stock	$20,000,000.00	$5,000,000.00	$25,000,000.00
Funded Debt	19,852,000.00	5,000,000.00	24,852,000.00
Current Liabilities:			
Loans and Notes Payable	5,480,604.93	8,907,254.33	[1]5,480,604.93
Audited Accts. & Wages Pay	513,216.13	.....	513,216.13
Matured Interest Unpaid	4,242,250.00	.....	4,242,250.00
Accrued Interest	297,833.33	.....	297,833.33
Other Current Liabilities	90,276.60	.....	90,276.60
	$10,624,180.99	$8,907,254.33	$10,624,180.99
Tax Liability	57,229.06	.....	57,229.06
Accrued Depreciation	7,456,078.98	104,900.00	7,560,978.98
Unadjusted Credits	18,289.47	.....	18,289.47
Corporate Surplus	.....	.....	.....
Funded Debt Retired	278,000.00	.....	278,000.00
[fol. 97] Sinking Fund Reserve	3,018,307.23	1,278,316.69	4,296,623.92
Total Appropriated Surplus	3,296,307.23	1,278,316.69	4,574,623.92
Profit & Loss Balance	1,602,664.37	104,900.00*	1,497,764.37
Total	4,898,971.60	1,173,416.69	6,072,388.29
Total Liabilities	$62,906,750.10	$20,185,571.02	$74,185,066.79

[1] After Inter Company elimination of $8,907,254.33.
[*Red in copy.]

[fol. 98] Statement "G"

Los Angeles Railway Corporation & City Railway Company of Los Angeles

Income and Profit and Loss Statement, Year 1925

	L. A. Railway Corporation	City Railway Company	Total
Operating Income:			
Railway Operating Revenues	$12,852,118.73	.....	$12,852,118.73
Railway Operating Expenses	10,507,389.18	.....	10,507,389.18
Net Revenue—Railway Operations	2,344,729.55	.....	2,344,729.55
Taxes Assignable to Railway Operations	820,315.51	.....	820,315.51
Operating Income	$1,524,414.04	.....	$1,524,414.04
Non-operating Income:			
Income from Lease of Road	.....	350,000.00	350,000.00
Income from Sinking Funds	128,452.13	54,137.49	182,589.62
Miscellaneous Income	1,900.93	.....	1,900.93
	130,353.06	404,137.49	534,490.55
Gross Income	$1,654,767.10	404,137.49	$2,058,904.59

Deductions from Gross Income:			
Rent for Leased Roads	350,000.00	.....	350,000.00
Miscellaneous Rents	1,050.00	.....	1,050.00
Interest on Funded Debt	992,600.00	250,000.00	1,242,600.00
Interest on Unfunded Debt	273,348.04	.....	273,348.04
Total Deb. from Gross Income	1,616,998.04	250,000.00	1,866,998.04
Income trans. to Profit & Loss	37,769.06	154,137.49	191,906.55
[fol. 99] Credit balance at beginning of year	$2,045,295.58	104,900.00*	$1,940,395.58
Credit balance trans. from Income Account	37,769.06	154,137.49	191,906.55
Donations	139,500.00	.....	139,500.00
Miscellaneous Credits	13,979.42	.....	13,979.42
	2,236,544.06	49,237.49	2,285,781.55
Appropriations of Surplus to Sinking Funds	288,827.13	154,137.49	442,964.62
Loss on Road and Equipment Retired	5,013.76	.....	5,013.76
Miscellaneous Debits	17,023.20	.....	17,023.20
	310,864.09	154,137.49	465,001.58
Credit balance December 31, 1925	$1,925,679.97	104,900.00*	$1,820,779.97

NOTE.—Includes Los Angeles Railway bus operations and company's share of Los Angeles Motor Bus Company's operations.

[*Red in copy.]

Statement "G"—Continued

[fol. 100] Los Angeles Railway Corporation & City Railway Company of Los Angeles

Income and Profit and Loss Statement, January 1 to September 30, 1926

	L. A. Railway Corporation	City Railway Company	Total
Operating Income:			
Railway Operating Revenues	$9,658,362.01	$	$9,658,362.01
Railway Operating Expenses	8,145,666.30	.....	8,145,666.30
Net Revenue—Railway Operations	1,512,695.71	.....	1,512,695.71
Taxes Assignable to Railway Operations	596,777.38	.....	596,777.38
Operating Income	915,918.33	.....	915,918.33
Non-operating Income:			
Income from Lease of Road	.....	287,500.00	287,500.00
Income from Sinking Funds	106,535.00	45,955.85	152,490.85
Miscellaneous Income	738.93	.....	738.93
	107,273.93	333,455.85	440,729.78
Gross Income	1,023,192.26	333,455.85	1,356,648.11
Deductions from Gross Income:			
Rent for Leased Roads	262,500.00	.....	262,500.00
Miscellaneous Rents	787.50	.....	787.50

Interest on Funded Debt	744,450.00	187,500.00	931,950.00
Interest on Unfunded Debt	165,388.82	.....	165,388.82
Total Deb. from Gross Income	1,173,126.32	187,500.00	1,360,626.32
Income trans. to Profit & Loss	$149,934.06*	$145,955.85	$3,978.21*
[fol. 101] Credit balance at beginning of year	$1,925,679.97	$104,900.00*	$1,820,779.97
Credit balance trans. from Income Account	.....	145,955.85	145,955.85
Donations	24,351.80	.....	24,351.80
	1,950,031.77	41,055.85	1,991,087.62
Miscellaneous Debits	898.34	.....	898.34
Debit balance trans. from Income Account	149,934.06	.....	149,934.06
Appropriations of Surplus to Sinking Funds	196,535.00	145,955.85	342,490.85
	347,367.40	145,955.85	493,323.25
Credit balance September 30, 1926	$1,602,664.37	104,900.00*	$1,497,764.37

NOTE.—Includes Los Angeles Railway bus operations and company's share of Los Angeles Motor Bus Company's operations.

[*Red in copy.]

Statement "H"

Los Angeles Railway Corporation & City Railway Company

Extensions and Total Investment—Road and Equipment (as Shown by the Company Books)

(Taken from Joint Report of Street Railway Survey City of Los Angeles, 1925—Table No. 11, Page 79)

Year	Extensions to road and equipment during year			Total investment in road and equipment at end of year		
	L. A. Ry. Corp.	City Railway Co.	Total	L. A. Ry. Corp.	City Railway Co.	Total
1912	.....	.....	.....	$41,623,159.68	$7,638,230.73	$49,261,390.41
1913	$555,000.97	$905,810.28	$1,460,811.25	42,173,160.65	8,544,041.01	50,722,201.66
1914	771,007.55	204,885.71	975,893.26	42,949,168.20	8,748,926.72	51,698,094.92
1915	638,894.99	193,046.77	831,941.76	43,588,063.19	8,941,973.49	52,530,036.68
1916	474,941.30	254,460.49	729,401.79	44,063,004.49	9,196,433.98	53,259,438.47
1917	262,554.28	17,505.90	280,060.18	44,325,558.77	9,213,939.88	53,539,498.65
1918	232,335.11	81,284.36	313,619.47	44,557,893.88	9,295,224.24	53,853,118.12
1919	255,103.01	582.41	255,685.42	44,812,996.89	9,295,806.65	54,108,803.54
1920	409,061.58	553,344.32	962,405.90	45,222,058.47	9,849,150.97	55,071,209.44
1921	727,548.73	699,312.13	1,426,860.86	45,949,607.20	10,548,463.10	56,498,070.30
1922	1,627,050.95	1,340,540.19	2,967,591.14	47,576,658.15	11,889,003.29	59,465,661.44
1923	399,440.27	3,017,243.37	3,416,683.64	47,976,098.42	14,906,246.66	62,882,345.08
1924	1,185,871.74	3,120,421.98	4,306,293.72	49,161,970.16	18,026,668.64	67,188,638.80
1925	193,923.77	415,613.56	609,537.33	49,355,893.93	18,442,282.20	67,798,176.13
The following Investment in Bus Division is included in the above Totals for 1922, 1923 and 1924 and 1925:						
1922	.....	$9,450.47	$9,450.47	.....	$9,450.47	$9,450.47
1923	.....	419,643.92	419,643.92	.....	429,094.39	429,094.39
1924	.....	413,582.01	413,582.01	.....	842,676.40	842,676.40
1925	.....	.....	317,154.17	.....	.....	1,159,830.57

(Continuation of Statement "H" follows, marked side folio pages 103, 104, 105, 106, 107, 108, 109, 110, and 111)

[fol. 103]

Changes in Service, Operating and Fin

(Taken from the Joint R

1. Miles of Single Track.....
2. Length of Bus Routes, miles.....
3. Number of Passenger Cars.....
4. Number of Busses.....
5. Number of Passengers carried, including transfers and free passengers, including busses.....
6. Number of Revenue Passengers, including busses.....
7. Passenger Car Miles, including busses.....
8. Passenger Car Hours, including busses.....
9. Total Revenue from Transportation.....
10. Total Passenger Revenue.....
11. Total Operating Revenues.....
12. Total Operating Expenses.....
13. Revenue from Transportation per Car Mile, including busses .....
14. Revenue from Transportation per Car Hour, including busses .....
15. Operating Expenses per Car Mile, including busses.....
16. Operating Expenses per Car Hour, including busses.....
17. Average Fare, Revenue Passengers, including busses.....
18. Average Fare, All Passengers (including transfer).....
19. Taxes (not included in 12).....
20. Depreciation (included in 12).....
21. Gross Income (fair return), available for Fixed Charges, Dividends and Surplus (not including revenue from Sinking Funds).....
22. Total Corporate Surplus.....
23. Investment in Road and Equipment (Book Figures).....
24. Valuation—Reproduction Cost New.....
25. Valuation—Reproduction Cost less Depreciation.....
26. Valuation—Historical Cost .....

* As of December 31, 1924, agreed valuation by Commission, City and Com
three and four million dollars.

Statement "H"

Los Angeles Railway Corporation

vice, Operating and Financial Conditions of Los Angeles Railway, 1918 to 1925, Inclusive (Including B ıs Operations)

Taken from the Joint Report of Street Railway Survey, City of Los Angeles, 1925, Table No. IV, page 95)

	1918	1919	1920	1921	1922	1923	1924	1925
.....	387.81	388.89	390.63	384.61	384.59	395.95	397.05	401.30
.....	.....	.....	.....	.....	.....	42.43	49.98	68.78
.....	882	882	926	965	1,014	1,065	1,225	1,251
.....	.....	.....	.....	.....	.....	59	82	114
ıcluding transfers and ıses.....	182,181,408	199,152,543	247,749,056	278,480,403	303,139,305	342,633,875	352,974,629	347,601,711
including busses.....	130,358,740	145,424,597	179,227,041	200,878,652	219,022,470	248,441,393	254,776,010	248,145,545
usses.....	31,243,680	28,563,366	29,980,055	30,062,428	29,458,292	32,269,576	35,139,827	35,547,638
busses.....	3,111,683	2,858,081	2,986,669	3,099,138	3,057,389	3,371,338	3,675,299	3,682,319
ion.....	$6,533,190	$7,295,219	$8,988,051	$10,072,755	$10,998,486	$12,520,866	$12,961,686	$12,717,659
.....	$6,519,878	$7,283,137	$8,980,245	$10,065,715	$10,989,501	$12,511,260	$12,961,846	$12,708,733
.....	$6,577,639	$7,336,550	$9,032,293	$10,121,517	$11,118,874	$12,645,436	$13,097,426	$12,852,119
.....	$5,450,358	$6,097,775	$7,246,683	$8,232,577	$7,623,647	$8,915,490	$9,854,447	$10,507,389
r Car Mile, including	$ .20910	$ .25541	$ .29980	$ .33506	$ .373358	$ .388008	$ .368860	$ .35776
r Car Hour, including	$2.09956	$2.5525	$3.00939	$3.25018	$3.597346	$3.713916	$3.526702	$3.45371
, including busses....	$ .1744	$ .2135	$ .2417	$ .27384	$ .258794	$ .276281	$ .280435	$ .29588
r, including busses...	$1.7516	$2.1335	$2.4263	$2.65640	$2.493515	$2.644496	$2.681264	$2.85347
rs, including busses..	$ .05001	$ .05008	$ .05010	$ .050108	$ .050175	$ .050359	$ .050836	$ .05122
ıcluding transfer)...	$ .03691	$ .03751	$ .03705	$ .03710	$ .037127	$ .037358	$ .037561	$ .03741
.....	$338,800	$373,800	$396,000	$480,000	$809,000	$832,726	$855,000	$796,000
.....	$460,635	$518,234	$730,813	$915,680	$977,442	$1,082,383	$1,279,387	$1,466,496
vailable for Fixed rplus (not including	$791,350	$866,600	$1,395,804	$1,413,418	$2,705,872	$2,936,334	$2,479,949	$1,659,293
.....	$1,291,323	$1,008,651	$1,204,661	$1,370,795	$2,857,042	$4,579,107	$5,734,564	$6,057,913
nt (Book Figures)...	$53,853,118	$54,108,804	$55,171,209	$56,498,070	$59,529,403	$62,882,345	$67,188,639	$67,798,176
lew.....	.....	.....	.....	.....	.....	.....	*$54,745,328	.....
Depreciation.....	.....	.....	.....	.....	.....	.....	*$49,331,172	.....
.....	.....	.....	.....	.....	.....	.....	*$42,051,007	.....

by Commission, City and Company engineers as of March 31, 1923, plus net additions and betterments and materials and supplies, not including claims of Company between

[fol. 1[illegible]4]

Statement "H"

Los Angeles Railway Corporation

Comparative Statement of Revenue and Expenses

(Taken from Joint Report of Street Railway Survey, City of Los Angeles, 1925—Table No. V

Item	1918	1919	1920	1921	1922
Railway Operating Revenue:					
Transportation	$6,533,190	$7,295,219	$8,988,051	$10,072,755	$10,998,486
Other	44,449	41,331	44,241	48,762	120,388
Total	$6,577,639	$7,336,550	$9,032,292	$10,121,517	$11,118,874
Railway Operating Expense:					
Operating Expense	4,989,723	5,579,542	6,515,871	7,316,897	6,646,205
Depreciation	460,635	518,234	730,813	915,680	977,442
Total	$5,450,358	$6,097,776	$7,246,684	$8,232,577	$7,623,647
Net Operating Revenue	$1,127,281	$1,238,774	$1,785,608	$1,888,940	$3,495,227
Taxes	338,800	373,800	396,000	480,000	809,000
Operating Income	$788,481	$864,975	$1,389,608	$1,408,940	$2,686,227
Non-Operating Income	2,869	1,625	6,196	4,478	19,645
Gross Income	$791,350	$866,600	$1,395,804	$1,413,418	$2,705,872
Deductions from Gross Income	1,208,309	1,214,578	1,232,683	1,223,739	1,354,047
Sub-Total—Net Income	$416,959*	$347,978*	$163,121	$189,679	$1,351,825
Busses—Gain or Loss	.....	.....	.....	.....	.....
Net Income	$416,959*	$347,978*	$163,121	$189,679	$1,351,825
Profit and Loss:					
Profit and Loss at Beginning of Year	530,841	369,000*	937,845*	975,014*	1,165,065*
Net Income During Year	416,959*	347,978*	163,121	189,679	1,351,825
Miscellaneous Debits and Credits	278,616	16,601	3,976*	175,464	4,489*
Sinking Fund Appropriations	204,266	204,266	204,266	204,266	204,266
Retirement of Bonds—Credit	.....	.....	.....	.....	.....
Balance to Profit and Loss	$369,000*	$937,845*	$975,014*	$1,165,065*	$13,017*
Corporate Surplus:					
Funded Debt Retired	148,000	148,000	148,000	148,000	148,000
Sinking Fund Reserve	1,512,323	1,798,496	2,136,574	2,492,760	2,866,959
Balance to Profit and Loss	369,000*	937,845*	975,014*	1,165,065*	13,017*
Total	$1,291,323	$1,008,651	$1,309,560	$1,475,695	$3,001,942
Loss—From Set-up of Depreciation	.....	.....	104,900*	104,900*	104,900*
	$1,291,323	$1,008,651	$1,204,660	$1,370,795	$2,897,042

[*Red in copy.]

Statement "H"

Los Angeles Railway Corporation

Comparative Statement of Revenue and Expenses

(Taken from Joint Report of Street Railway Survey, City of Los Angeles, 1925—Table No. V, Page 101)

	1918	1919	1920	1921	1922	1923	1924	1925
.....	$6,533,190	$7,295,219	$8,988,051	$10,072,755	$10,998,486	$12,460,656	$12,587,721	$12,096,444
.....	44,449	41,331	44,241	48,762	120,388	124,569	131,728	128,133
.....	$6,577,639	$7,336,550	$9,032,292	$10,121,517	$11,118,874	$12,585,225	$12,719,449	$12,224,577
.....	4,989,723	5,579,542	6,515,871	7,316,897	6,646,205	7,763,228	8,227,814	8,500,486
.....	460,635	518,234	730,813	915,680	977,442	1,061,013	1,159,524	1,270,303
.....	$5,450,358	$6,097,776	$7,246,684	$8,232,577	$7,623,647	$8,824,241	$9,387,338	$9,770,789
.....	$1,127,281	$1,238,774	$1,785,608	$1,888,940	$3,495,227	$3,760,984	$3,332,112	$2,453,788
.....	338,800	373,800	396,000	480,000	809,000	830,000	855,000	796,000
.....	$788,481	$864,975	$1,389,608	$1,408,940	$2,686,227	$2,930,984	$2,477,112	$1,657,788
.....	2,869	1,625	6,196	4,478	19,645	5,350	2,837	1,505
.....	$791,350	$866,600	$1,395,804	$1,413,418	$2,705,872	$2,936,334	$2,479,949	$1,659,293
.....	1,208,309	1,214,578	1,232,683	1,223,739	1,354,047	1,372,158	1,408,035	1,515,948
.....	$416,959*	$347,978*	$163,121	$189,679	$1,351,825	$1,564,176	$1,071,914	$143,345
.....	.....	.....	.....	.....	.....	34,492*	102,661*	134,028*
.....	$416,959*	$347,978*	$163,121	$189,679	$1,351,825	$1,529,684	$969,253	$9,317
Year.....	530,841	369,000*	937,845*	975,014*	1,165,065*	13,017*	1,280,276	2,045,296
.....	416,959*	347,978*	163,121	189,679	1,351,825	1,529,684	969,253	9,317
ts.....	278,616	16,601	3,976*	175,464	4,489*	127*	16,184*	131,443*
.....	204,266	204,266	204,266	204,266	204,266	236,518	220,417	260,375
.....	.....	.....	.....	.....	.....	.....	.....	.....
s.....	$369,000*	$937,845*	$975,014*	$1,165,065*	$13,017*	$1,280,276	$2,045,296	$1,925,680
.....	148,000	148,000	148,000	148,000	148,000	148,000	148,000	278,000
.....	1,512,323	1,798,496	2,136,574	2,492,760	2,866,959	3,255,731	3,646,168	3,959,133
.....	369,000*	937,845*	975,014*	1,165,065*	13,017*	1,280,276	2,045,296	1,925,680
.....	$1,291,323	$1,008,651	$1,309,560	$1,475,695	$3,001,942	$4,684,007	$5,839,464	$6,162,813
ion.....	.....	.....	104,900*	104,900*	104,900*	104,900*	104,900*	104,900*
	$1,291,323	$1,008,651	$1,204,660	$1,370,795	$2,897,042	$4,579,107	$5,734,564	$6,057,913

[fol. 105]

Statement "H"

Los Angeles Railway Corporation

Comparative Table Showing Increases in Operating Revenue, Revenue Pa

(Taken From Joint Report of Street Railway Survey, City of Los Angeles

Year	Additional capital invested	Total amount	Operating revenue: Previous year Amount	Previous year %	Increase or decrease over 1913 Amount	Increase or decrease over 1913 %	Total number passengers	Reven: Previous year Passengers	Previous year %
1	2	3	4	5	6	7	8	9	10
1911	$2,465,108	$5,817,562	.....	....	$1,188,383*	15.5*	113,373,006	.....	...
1912	1,874,204	6,542,469	$724,907	12.5	463,476*	6.6*	130,515,983	17,142,977	15.
1913	1,460,811	7,005,945	463,476	7.1	.....	....	139,752,262	9,236,279	7.
1914	975,893	6,756,214	249,731*	3.6*	249,731*	3.6*	134,994,022	4,758,240*	3.
1915	831,942	6,135,215	620,999*	9.2*	870,730*	12.4*	122,184,028	12,809,994*	9.
1916	729,402	5,861,832	273,383*	4.4*	1,144,113*	16.3*	117,336,924	4,847,104*	4.
1917	280,060	6,145,736	283,904	4.8	860,209*	12.3*	123,074,300	5,737,376	4.
1918	313,619	6,577,639	431,903	7.0	428,306*	6.1*	130,358,704	7,284,404	5.
1919	255,685	7,336,550	758,911	11.5	330,605	4.7	145,424,597	15,065,893	11.
1920	962,406	9,032,293	1,695,743	23.1	2,026,348	29.0	179,227,041	33,802,444	23.
1921	1,426,861	10,121,517	1,089,224	12.1	3,115,572	44.5	200,878,652	21,651,611	12.
1922	2,976,591	11,118,874	997,357	9.9	4,112,929	58.7	219,022,470	18,143,818	9.
1923	3,416,683	12,585,225	1,466,351	13.2	5,579,280	79.6	247,607,235	28,584,765	13.
1924	4,306,294	12,719,450	134,225	1.1	5,713,505	81.6	250,195,388	2,588,153	1.
1925	609,537	12,224,577	494,873*	3.9*	5,218,632	74.5	240,471,199	9,724,169*	3.

2 Addition Capital as shown on books in 1922 was $3,031,333. $63,741.83 was included for Right of Way owned b ducted in 1923 and has also been deducted from our figures for 1922.

3 Including City Railway Company.

13 Car miles operated in 1913 as shown on books were 29,115,192.97. This figure included work equipment mileage du each of these months and 200 miles for March, as additional car mileage. 16,625.35 miles were shown on the books, the differe 100,568 miles obtained.

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Statement "H"

Los Angeles Railway Corporation

ble Showing Increases in Operating Revenue, Revenue Passengers and Car Miles Operated

int Report of Street Railway Survey, City of Los Angeles, 1925—Table No. VI, Page 104)

rating revenue			Revenue passengers					Car miles operated			
	Increase or decrease over 1913			Previous year		Increase or decrease over 1913			Previous year		Increase or decrease over 1913	
	Amount	%	Total number passengers	Passengers	%	Passengers	%	Total number miles	Miles	%	Miles	%
5	6	7	8	9	10	11	12	13	14	15	16	17
	$1,188,383*	15.5*	113,373,006	.....	....	$26,379,256*	18.8*	24,155,903	.....	....	$4,944,665*	17.0*
.5	463,476*	6.6*	130,515,983	17,142,977	15.1	9,236,279*	6.6*	26,850,329	2,694,426	11.1	2,250,239*	7.7*
.1	.....	....	139,752,262	9,236,279	7.1	.....	....	29,100,568	2,250,239	8.4	.....	....
.6*	249,731*	3.6*	134,994,022	4,758,240*	3.4*	4,758,240*	3.4	29,814,812	714,244	2.5	714,244	2.5
.2*	870,730*	12.4*	122,184,028	12,809,994*	9.5*	17,568,234*	12.6*	29,496,112	318,700*	1.1*	395,544	1.4
.4*	1,144,113*	16.3*	117,336,924	4,847,104*	4.0*	22,415,338*	16.0*	29,135,639	360,473*	1.2*	35,071	.1
.6	860,209*	12.3*	123,074,300	5,737,376	4.9	16,677,962*	11.9*	30,053,576	917,937	3.2	953,008	3.3
.0	428,306*	6.1*	130,358,704	7,284,404	5.9	9,393,558*	6.7*	31,243,680	1,190,104	4.0	2,143,112	7.4
.5	330,605	4.7	145,424,597	15,065,893	11.6	5,672,335	4.1	28,563,366	2,680,314*	8.6*	537,202*	1.8*
.1	2,026,348	29.0	179,227,041	33,802,444	23.3	39,474,779	28.2	29,981,438	1,418,072	5.0	880,870	3.0
.1	3,115,572	44.5	200,878,652	21,651,611	12.1	61,126,390	43.7	30,064,883	83,445	.3	964,315	3.3
.9	4,112,929	58.7	219,022,470	18,143,818	9.0	79,270,208	56.7	29,461,593	603,290*	2.0*	361,025	1.2
.2	5,579,280	79.6	247,607,235	28,584,765	13.1	107,854,973	77.2	31,816,923	2,355,330	8.0	2,716,355	9.3
.1	5,713,505	81.6	250,195,388	2,588,153	1.0	110,443,126	79.0	33,089,169	1,272,246	4.0	3,988,601	13.7
.0*	5,218,632	74.5	240,471,199	9,724,169*	3.9*	100,718,937	72.1	32,564,123	525,046*	1.6*	3,463,555	11.9

1,333. $63,741.83 was included for Right of Way owned by Huntington Land and Improvement Company. This amount of money was de-922.

5,192.97. This figure included work equipment mileage during the months of January, February and April. 600 miles were estimated for mileage. 16,625.35 miles were shown on the books, the difference between this figure and 2,000 as estimated was deducted and a total of 29,-

[fol. 106]

Statement "H"

Los Angeles Railway Corporation

(Railway Operating Revenue)

(Taken from Joint Report of Street Railway Survey, City of Los Angeles, 1925

Acct. No.	Items	1919 Total	1919 %	1920 Total	1920 %	1921 Total	1921 %	1922 Total	1922 %
	I. Revenue from Transportation:								
101.	Passenger Revenue	$7,283,137.00	99.27	$8,980,243.35	99.42	$10,065,714.66	99.45	$10,989,500.85	98.84
103.	Parlor, Sleeping, Dining and Special Car Revenue	2,518.05	.03	2,168.00	.03	1,830.00	.02	2,113.75	.02
104.	Mail Revenue	4,958.53	.07	1,649.39	.02	703.34	.01	1,001.14	.01
105.	Express Revenue	4,358.37	.06	3,718.52	.04	4,111.69	.04	5,169.11	.05
109.	Miscellaneous Transportation Revenue	247.19	...	272.21	...	395.38	...	701.46	...
	Total Revenue from Transportation	$7,295,219.14	99.44	$8,988,051.47	99.51	$10,072,755.07	99.52	$10,996,486.31	98.92
	II. Revenue from Other Railway Operations:								
110.	Station and Car Privileges	$37,904.71	.52	$39,392.58	.44	$41,397.10	.41	$40,634.96	.37
115.	Rent of Track and Facilities	51.00	...	1.00	...	1.00	...	21.00	...
116.	Rent of Equipment	382.00	...	15.00	...	.....	...	1,315.56	.01
117.	Rent of Buildings and Other Property	1,458.75	.02	1,185.10	.01	1,709.00	.02	67,097.68	.60
118.	Power	.....	...	258.13	...	130.51	...	501.64	...
119.	Miscellaneous	1,540.15	.02	3,389.26	.04	5,524.17	.05	10,816.77	.10
	Total Revenue from Other Railway Operations	$41,330.89	.56	$44,241.07	.49	$48,761.78	.48	$120,387.61	1.08
	Total Operating Revenue	$7,336,550.03	100.	$9,032,292.54	100.	$10,121,516.85	100.	$11,118,873.92	100.

Statement "H"

Los Angeles Railway Corporation

(Railway Operating Revenue)

Report of Street Railway Survey, City of Los Angeles, 1925—Table No. VII, page 106)

1920		1921		1922		1923		1924		1925	
	%	Total	%	Total	%	Total	%	Total	%	Total	%
25	99.42	$10,065,714.66	99.45	$10,989,500.85	98.84	$12,451.050.00	98.93	$12,577,881.34	98.89	$12,087,518.60	98.88
00	.03	1,830.00	.02	2,113.75	.02	2,640.10	.02	2,600.10	.02	4,026.00	.03
89	.02	703.34	.01	1,001.14	.01	1,466.33	.01	1,691.76	.01	419.20	.003
82	.04	4,111.69	.04	5,169.11	.05	4,585.97	.04	4,829.50	.04	3,664.72	.03
31	...	395.38	...	701.46	...	913.60	...	718.38	...	815.20	.007
47	99.51	$10,072,755.07	99.52	$10,996,486.31	98.92	$12,460,656.00	99.00	$12,587,721.08	98.97	$12,096,443.72	98.25
68	.44	$41,397.10	.41	$40,634.96	.37	$44,131.09	.37	$52,554.16	.41	$51,285.77	.42
00	...	1.00	...	21.00	...	.....	...	21.52	...	1.00	....
00	...	.....	...	1,315.56	.01	2,473.10	.01	2,819.17	.02	1,978.57	.015
10	.01	1,709.00	.02	67,097.68	.60	69,064.35	.55	70,767.03	.56	71,543.22	.59
13	...	130.51	...	501.64	...	.....	...	.....	...	.....	....
36	.04	5,524.17	.05	10,816.77	.10	8,902.93	.07	5,566.58	.04	3,325.11	.025
07	.49	$48,761.78	.48	$120,387.61	1.08	$124,569.47	1.00	131,728.46	1.03	128,133.67	1.05
54	100.	$10,121,516.85	100.	$11,118,873.92	100.	$12,585,225.47	100.	$12,719,449.54	100.	$12,224,577.39	100.

[fol. 107]

Statement "H"

Los Angeles Railway Corporation

Railway Operating Expense—Recapitulation of Expe

(Taken from Joint Report of Street Railway Survey, City of Los Angeles, 192

Groups	1919 Total	1919 %	1920 Total	1920 %	1921 Total	1921 %	1922 Total	
I. Ways and Structures	$341,177.93	5.59	$375,551.18	5.16	$586,889.04	7.13	$504,470.18	
II. Equipment	590,698.13	9.69	638,382.55	8.81	755,271.20	9.17	521,493.25	
III. Power	840,161.88	13.78	1,018,971.04	14.05	1,035,414.83	12.58	974,357.96	1
IV. Conducting Transportation	3,232,713.34	53 02	3,701,747.57	51.09	4,029,619.22	48.95	3,807,034.65	4
V. Traffic	19,221.03	.31	22,315.82	.31	38,747.52	.47	37,841.16	
VI. General and Miscellaneous	555,569.49	9.11	758,902.44	10.47	870,955.56	10.58	801,007.49	1
Sub-Total	$5,579,541.80	91.50	$6,515,870.60	89.92	$7,316,897.37	88.88	$6,646,204.69	8
Depreciation	518,233.76	8.50	730,812.74	10.08	915,679.99	11.12	977,442.00	1
Total	$6,097,775.56	100.	$7,246,683.34	100.	$8,232,577.36	100.	$7,623,646.69	10
Increase over preceding year	.....	...	1,148,907.78	18.84	985,894.02	13.60	608,930.67*	

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Statement "H"

Los Angeles Railway Corporation

Railway Operating Expense—Recapitulation of Expenses

(Report of Street Railway Survey, City of Los Angeles, 1925—Table No. VIII, Page 108)

1920		1921		1922		1923		1924		1925	
	%	Total	%	Total	%	Total	%	Total	%	Total	%
.18	5.16	$586,889.04	7.13	$504,470.18	6.62	$508,473.52	5.77	$573,518.92	6.11	$703,976.29	7.20
.55	8.81	755,271.20	9.17	521,493.25	6.84	566,745.17	6.42	901,264.52	9.60	1,173,515.49	12.01
.04	14.05	1,035,414.83	12.58	974,357.96	12.58	1,018,767.45	11.55	1,004,361.55	10.70	1,023,872.44	10.48
.57	51.09	4,029,619.22	48.95	3,807,034.65	49.94	4,446,800.06	50.39	4,721,785.05	50.30	4,621,301.13	47.30
.82	.31	38,747.52	.47	37,841.16	.50	33,891.96	.38	22,886.25	.24	24,421.58	.25
.44	10.47	870,955.56	10.58	801,007.49	10.51	1,188,549.95	13.47	1,003,998.01	10.70	953,399.29	9.76
.60	89.92	$7,316,897.37	88.88	$6,646,204.69	87.18	$7,763,228.09	87.98	$8,227,814.30	87.65	$8,500,486.22	87.00
.74	10.08	915,679.99	11.12	977,442.00	12.82	1,061,013.00	12.02	1,159,524.00	12.35	1,270,303.00	13.00
.34	100.	$8,232,577.36	100.	$7,623,646.69	100.	$8,824,241.09	100.	$9,387,338.30	100.	$9,770,789.22	100.
.78	18.84	985,894.02	13.60	608,930.67*	7.39*	1,200,594.40	15.75	563,097.21	6.38	583,450.92	6.22

[fol. 108]

Statement "H"

Los Angeles Railway Corporation

Railway Operating Expense

1. Way and Structures

(Taken from "Joint Report Street Railway Survey, City of Los Angeles, 1925"

Acct. No.	Account	1919 Total	1919 %	1920 Total	1920 %	1921 Total	1921 %	1922 Total	1922 %
1.	Superintendence of Ways and Structures	$29,814.81	.48	$45,893.59	.63	$51,913.28	.63	$51,890.80	.6
2.	Ballast	3,150.11	.05	876.87	.01	1,252.79	.02	2,854.55	.0
3.	Ties	18,475.19	.30	2,989.12	.04	13,522.31	.16	8,212.81	.1
4.	Rails	867.03*	.01*	2,093.43	.03	6,264.41	.08	2,775.16	.0
5.	Rail Fastenings and Joints	4,680.23	.08	8,055.97	.11	11,698.82	.14	8,106.65	.1
6.	Special Work	4,024.17	.07	2,544.06	.04	14,013.29	.17	1,693.91	.0
8.	Track and Roadway Labor	110,292.52	1.81	94,646.99	1.31	171,635.41	2.08	160,900.32	2.1
9.	Miscellaneous Track and Roadway Expenses	9,507.05	.15	13,475.35	.19	18,531.03	.23	19,647.26	.2
10.	Paving	36,466.76	.60	50,135.79	.69	66,194.55	.80	71,824.75	.9
11.	Cleaning and Sanding Track	24,519.41	.40	28,539.79	.39	36,275.29	.44	34,056.35	.4
15.	Bridges, Trestles and Culverts	3,378.55	.06	5,866.69	.08	44,523.72	.54	6,133.11	.0
16.	Crossings, Fences and Signs	1,083.73	.02	2,895.67	.04	2,268.73	.03	2,252.63	.0
17.	Signal and Interlocking Apparatus	823.25	.01	570.69	.01	717.81*	.01*	439.32	.0
18.	Telephone and Telegraph Systems	6,038.19	.10	5,539.95	.08	6,502.06	.08	5,760.53	.0
19.	Miscellaneous Way Expenses	3,683.03	.06	5.70	...	.....	...	1.47	..
20.	Poles and Fixtures	12,914.74	.21	18,395.26	.25	26,538.56	.32	30,051.89	.3
22a.	Distribution System—Overhead Feeders	.....	...	.....	...	.....	...	.....	..
22c.	Distribution System—Track Bonding	54,343.79	.89	67,579.28	.93	76,831.66	.93	58,130.36	.7
22d.	Distribution System—Overhead Trolley	.....	...	.....	...	.....	...	.....	..
22g.	Distribution System—Ground Return	.....	...	.....	...	.....	...	.....	..
23.	Miscellaneous Electric Line Expenses	7,641.68	.13	3,428.98	.05	3,701.17	.05	3,912.22	.0
24a.	Buildings, Fixtures and Grounds, Car House	.....	...	.....	...	.....	...	.....	..
24c.	Buildings, Fixtures and Grounds, Shops	11,207.75	.18	22,016.00	.30	35,939.77	.44	35,826.09	.4
24d.	Buildings, Fixtures and Grounds, General Offices	.....	...	.....	...	.....	...	.....	..
24e.	Buildings, Fixtures, Station, Waiting Rooms, etc	.....	...	.....	...	.....	...	.....	..
24f.	Buildings, Fixtures, Miscellaneous Buildings and Structures	.....	...	.....	...	.....	...	.....	..

Statement "H"

Los Angeles Railway Corporation

Railway Operating Expense

1. Way and Structures

FOLD OUT IS TOO LARGE TO BE FILMED

Report Street Railway Survey, City of Los Angeles, 1925"—Table No. IX, Page 110)

	1921		1922		1923		1924		1925	
%	Total	%	Total	%	Total	%	Total	%	Total	%
.63	$51,913.28	.63	$51,890.80	.68	$62,584.31	.71	$62,745.77	.67	$88,530.08	.91
.01	1,252.79	.02	2,854.55	.04	1,434.70	.02	1,822.75	.02	2,703.20	.03
.04	13,522.31	.16	8,212.81	.11	9,017.31	.10	10,718.91	.11	19,004.05	.19
.03	6,264.41	.08	2,775.16	.04	4,485.23	.05	2,229.69	.02	841.61	.01
.11	11,698.82	.14	8,106.65	.11	8,147.28	.09	9,654.75	.10	12,046.00	.12
.04	14,013.29	.17	1,693.91	.02	5,358.83	.06	5,028.25	.05	5,859.68	.06
1.31	171,635.41	2.08	160,900.32	2.11	143,285.16	1.63	144,203.49	1.54	186,102.41	1.90
.19	18,531.03	.23	19,647.26	.26	30,674.67	.35	24,781.91	.26	22,779.74	.23
.69	66,194.55	.80	71,824.75	.94	69,207.64	.78	60,306.84	.64	84,254.46	.86
.39	36,275.29	.44	34,056.35	.45	33,434.36	.38	39,873.90	.42	41,484.09	.42
.08	44,523.72	.54	6,133.11	.08	3,195.53	.04	9,151.63	.10	30,695.92	.31
.04	2,268.73	.03	2,252.63	.03	1,065.88	.01	3,940.06	.04	3,419.61	.03
.01	717.81*	.01*	439.32	.01	577.46	.01	658.41	.01	748.15	.01
.08	6,502.06	.08	5,760.53	.07	7,586.13	.08	8,740.21	.09	8,960.26	.09
...	.....	...	1.47	...	.....	...	.....	...	17,442.89	.18
.25	26,538.56	.32	30,051.89	.39	29,120.85	.33	40,163.56	.43	27,970.83	.29
...	.....	...	.....	...	2,215.33	.03	5,045.06	.05	5,020.26	.05
.93	76,831.66	.93	58,130.36	.76	4,876.28	.06	6,588.48	.07	10,741.03	.11
...	.....	...	.....	...	50,398.42	.57	62,910.75	.67	81,701.38	.84
...	.....	...	.....	...	130.43	...	755.37	.01	386.57	.01
.05	3,701.17	.05	3,912.22	.05	4,476.20	.05	6,144.20	.07	5,819.87	.06
...	.....	...	.....	...	15,289.15	.17	25,990.06	.28	10,681.71	.11
.30	35,939.77	.44	35,826.09	.47	4,958.08	.06	17,834.62	.19	8,617.96	.09
...	.....	...	.....	...	1,757.26	.02	2,574.70	.03	5,138.57	.05
...	.....	...	.....	...	663.95	.01	1,429.65	.02	864.10	.01
...	.....	...	.....	...	14,533.06	.16	20,225.90	.22	22,161.86	.23
5.18	$586,889.04	7.13	$504,470.18	6.62	$508,473.52	5.77	$573,518.92	6.11	$703,976.29	7.20

[fol. 109]

Statement "H"

Los Angeles Railway Corporation

Railway Operating Expenses

II. Equipment

(From Joint Report of Street Railway Survey, City of Los Angeles, 1925—Ta

Acct. No.		1919		1920		1921		1922	
		Total	%	Total	%	Total	%	Total	%
29.	Superintendence of Equipment	$32,447.11	.53	$41,050.74	.57	$50,451.72	.61	$56,587.67	.74
30.	Passenger and Combination Cars	334,543.04	5.49	351,487.31	4.85	433,833.76	5.27	266,749.98	3.50
32.	Service Equipment	1,223.41	.02	8,337.27	.12	10,724.18	.13	8,477.09	.11
33.	Electrical Equipment of Cars	136,416.17	2.24	167,625.12	2.31	178,513.95	2.17	100,546.08	1.32
36.	Shop Equipment	5,653.73	.09	6,778.73	.09	10,049.16	.12	11,098.40	.15
37.	Ship Expenses	47,941.49	.78	44,777.40	.62	54,519.34	.66	57,119.15	.75
38.	Vehicles and Horses	12,521.83	.21	18,325.98	.25	17,179.09	.2	20,912.68	.27
38a.	Automobiles	.....	...	.....	...	.....	...	.....	...
39.	Miscellaneous Equipment Expenses	19,951.35	.33	.....	...	.....	...	2.20	...
	Sub-Total	$590,698.13	9.69	$638,382.55	8.81	$755,271.20	9.17	$521,493.25	6.84
40.	Depreciation of Equipment	172,744.58	2.83	243,604.24	3.36	290,803.46	3.53	301,742.68	3.96
	Total Annual Report	$763,442.71	12.52	$881,986.79	12.17	$1,046,074.66	12.70	$823,235.93	10.80
45.	Superintendence of Power	$7,543.75	.12	$10,864.93	.15	$10,756.92	.13	$9,379.07	.12
46.	Power Plant Buildings, Fixtures and Grounds	1,569.61	.03	1,480.97	.02	1,534.02	.02	2,874.10	.04
48.	Substation Equipment	11,726.60	.19	16,656.47	.23	38,460.13	.47	20,154.64	.26
49.	Transmission System	2,426.42	.04	2,311.49	.03	2,895.45	.04	5,223.85	.07
57.	Substation Employees	63,666.58	1.04	64,374.02	.89	67,572.24	.82	74,139.83	.97
58.	Substation Supplies and Expenses	2,093.29	.04	2,352.57	.03	3,659.78	.04	3,605.16	.05
59.	Power Purchased	751,135.63	12.32	920,930.59	12.71	910,536.29	11.06	858,981.31	11.27
	Total	$840,161.88	13.78	$1,018,971.04	14.06	$1,035,414.83	12.58	$974,357.96	12.78

Statement "H"

Los Angeles Railway Corporation

Railway Operating Expenses

II. Equipment

of Street Railway Survey, City of Los Angeles, 1925—Table No. X, Page 111)

	1921		1922		1923		1924		1925	
%	Total	%	Total	%	Total	%	Total	%	Total	%
.57	$50,451.72	.61	$56,587.67	.74	$61,751.30	.70	$60,284.67	.64	$93,223.46	.95
4.85	433,833.76	5.27	266,749.98	3.50	288,980.85	3.28	579,782.94	6.16	729,759.38	7.47
.12	10,724.18	.13	8,477.09	.11	9,041.96	.10	14,330.84	.15	18,083.36	.19
2.31	178,513.95	2.17	100,546.08	1.32	116,761.12	1.32	146,915.92	1.57	210,537.11	2.15
.09	10,049.16	.12	11,098.40	.15	11,271.11	.13	6,041.15	.06	17,176.76	.18
.62	54,519.34	.66	57,119.15	.75	58,279.11	.66	64,066.99	.68	80,267.97	.82
.25	17,179.09	.2	20,912.68	.27	20,619.02	.23	29,820.76	.32	24,415.61	.25
...	.....	...	.....	...	.....	...	.....	...	.....	...
...	.....	...	2.20	...	40.70	...	21.25	...	51.84	...
8.81	$755,271.20	9.17	$521,493.25	6.84	$566,745.17	6.42	$901,264.52	9.60	$1,173,515.49	12.01
3.36	290,803.46	3.53	301,742.68	3.96	348,339.96	3.95	411,036.00	4.38	517,041.00	5.29
12.17	$1,046,074.66	12.70	$823,235.93	10.80	$915,085.13	10.37	$1,312,300.52	13.98	$1,690,556.48	17.30
.15	$10,756.92	.13	$9,379.07	.12	$10,835.39	.12	$15,097.32	.16	$12,887.10	.13
.02	1,534.02	.02	2,874.10	.04	6,711.84	.08	10,858.90	.12	9,391.90	.10
.23	38,460.13	.47	20,154.64	.26	14,194.09	.16	24,794.25	.26	41,433.26	.42
.03	2,895.45	.04	5,223.85	.07	4,096.24	.05	6,161.96	.07	5,938.66	.06
.89	67,572.24	.82	74,139.83	.97	71,413.18	.81	79,597.74	.85	79,931.96	.82
.03	3,659.78	.04	3,605.16	.05	3,734.14	.04	6,039.19	.06	4,498.89	.05
12.71	910,536.29	11.06	858,981.31	11.27	907,782.55	10.29	861,812.19	9.18	869,800.67	8.90
14.06	$1,035,414.83	12.58	$974,357.96	12.78	$1,018,767.43	11.55	$1,004,361.55	10.70	$1,023,882.44	10.48

[fol. 110]

Statement "H"

Los Angeles Railway Corporation

Railway Operating Expenses

IV. Conducting Transportation

(Taken from Joint Report of Street Railway Survey, City of Los Angeles,

Acct. No.	Account	1919 Total	1919 %	1920 Total	1920 %	1921 Total	1921 %	1922 Total
63.	Superintendence of Transportation	$167,945.81	2.75	$280,993.92	3.88	$296,092.31	3.60	$321,294.66
64.	Pass. Conductors, Motormen and Trainmen	2,531,444.89	41.52	2,987,301.93	41.23	3,204,183.05	38.92	2,994,962.09
65.	Freight and Express Conductors, Motormen and Trainmen	824.01	.01	133.66	...	33.40	...	122.45
66.	Miscellaneous Car Service Employees	4,403.01	.07	9,016.56	.12	17,145.69	.21	30,644.20
67.	Miscellaneous Car Service Expenses	65,541.58	1.07	81,289.82	1.12	101,516.94	1.23	86,935.36
67a.	Lubricants	.....	...	.....	...	.....	...	.....
70.	Car House Employees	213,527.49	3.50	272,762.66	3.77	336,103.76	4.08	340,008.25
71.	Car House Expenses	46,483.24	.76	46,557.64	.64	46,911.13	.57	3,329.65
72.	Operation of Signal and Interlocking Apparatus	6,419.86	.11	10,513.43	.15	12,996.09	.16	12,130.49
73.	Operation of Telephone and Telegraph Lines	8,133.96	.13	9,272.95	.13	10,703.00	.13	11,541.29
78.	Other Transportation Expenses	187,989.49	3.08	3,905.00	.05	3,933.85	.05	6,056.21
	Total	$3,232,713.34	53.02	$3,701,747.57	51.09	$4,029,619.22	48.95	$3,807,034.65
							V. Traffic	
79.	Superintendence and Solicitation	$4,250.00	.07	$5,156.40	.07	$14,995.95	.18	$21,000.04
80.	Advertising	936.64	.01	3,938.01	.06	10,230.97	.13	3,092.58
81.	Parks, Resorts and Attractions	14,034.39	.23	13,221.41	.18	13,520.60	.16	13,748.54
82.	Miscellaneous Traffic Expense	.....	...	.....	...	.....	...	.....
	Total	$19,221.03	.31	$22,315.82	.31	$38,747.52	.47	$37,841.16

Statement "H"

Los Angeles Railway Corporation

Railway Operating Expenses

IV. Conducting Transportation

eport of Street Railway Survey, City of Los Angeles, 1925—Table No. XI, Page 112)

	1921		1922		1923		1924		1925	
%	Total	%	Total	%	Total	%	Total	%	Total	%
3.88	$296,092.31	3.60	$321,294.66	4.22	$427,660.86	4.85	$490,898.97	5.23	$465,034.38	4.78
41.23	3,204,183.05	38.92	2,994,962.09	39.29	3,467,721.05	39.30	3,664,158.14	39.03	3,577,878.92	36.62
...	33.40	...	122.45	...	1,375.05	.02	1,550.15	.02	1,452.35	.01
.12	17,145.69	.21	30,644.20	.40	60,147.83	.68	82,856.65	.88	135,369.54	1.39
1.12	101,516.94	1.23	86,935.36	1.14	77,982.06	.88	77,714.36	.83	81,963.33	.64
...	.....	...	.....	...	8,128.47	.09	7,688.32	.08	2,151.91	.02
3.77	336,103.76	4.08	340,008.25	4.46	362,618.35	4.11	357,322.48	3.81	314,256.50	3.22
.64	46,911.13	.57	3,329.65	.04	5,422.26	.06	3,040.07	.03	3,315.95	.03
.15	12,996.09	.16	12,130.49	.16	16,037.28	.18	16,595.49	.18	16,760.19	.17
.13	10,703.00	.13	11,541.29	.15	11,828.47	.13	13,255.08	.14	16,509.00	.17
.05	3,933.85	.05	6,056.21	.08	7,878.38	.09	6,715.34	.07	6,609.05	.07
51.09	$4,029,619.22	48.95	$3,807,034.65	49.94	$4,446,800.06	50.39	$4,721,785.05	50.30	$4,621,301.13	47.30
		V. Traffic								
.07	$14,995.95	.18	$21,000.04	.28	$22,100.53	.25	$11,230.19	.12	$11,345.38	.12
.06	10,230.97	.13	3,092.58	.04	1,591.78	.02	1,229.50	.01	3,067.30	.03
.18	13,520.60	.16	13,748.54	.18	10,199.65	.11	10,417.78	.11	10,008.90	.10
...	.....	...	.....	...	.....	...	8.68	...	.....	...
.31	$38,747.52	.47	$37,841.16	.50	$33,891.96	.38	$22,886.25	.24	$24,421.58	.25

[fol. 111]

Statement "H"

Los Angeles Railway Corporation

Railway Operating Expenses

VI. General and Miscellaneous

(Taken from Joint Report of Street Railway Survey, City of Los Angeles, 19

Acct. No.	Account	1919 Total	1919 %	1920 Total	1920 %	1921 Total	1921 %	1922 Total	
83.	Salaries and Expenses of General Officers	$29,403.00	.48	$42,430.00	.59	$56,158.65	.88	$56,059.34	
84.	Salaries and Expenses of General Office Clerks	75,087.79	1.23	105,009.54	1.45	132,972.20	1.61	142,383.53	1
85.	General Office Supplies and Expenses	16,399.74	.27	21,151.99	.29	51,329.77	.62	39,026.18	
86.	Law Expenses	19,687.10	.16	15,484.71	.21	18,537.93	.23	19,800.00	
89.	Miscellaneous General Expenses	116,893.40	1.92	100,367.55	1.39	125,413.74	1.52	104,277.53	1
90.	Valuation Expenses	.....	...	.....	...	.....	...	.....	
92.	Injuries and Damages	229,733.50	3.77	374,050.11	5.16	328,919.32	4.00	262,204.02	3
93.	Insurance	213.66	...	330.38	...	328.57	...	1,428.56	
94.	Stationery and Printing	28,332.76	.46	45,520.62	.63	92,832.93	1.13	84,218.12	1
95.	Store Expenses	26,660.42	.44	35,592.24	.49	41,830.34	.51	65,435.73	
96.	Garage and Stable Expenses	13,158.12	.22	18,965.20	.26	22,622.11	.28	26,174.48	
87.	Relief Department Expense	.....	...	.....	...	.....	...	.....	
	Total	$555,569.49	9.11	$758,902.44	10.47	$870,955.56	10.58	$801,007.49	10
							Depreciation		
25.	Depreciation of Ways and Structures	$345,489.18	5.67	$487,208.50	6.72	$624,876.53	7.59	$675,699.32	8
40.	Depreciation of Equipment	172,744.58	2.83	243,604.24	3.36	290,803.46	3.53	301,743.68	3
	Total	$518,253.76	8.50	$730,812.74	10.08	$915,879.99	11.12	$977,442.00	12

Statement "H"

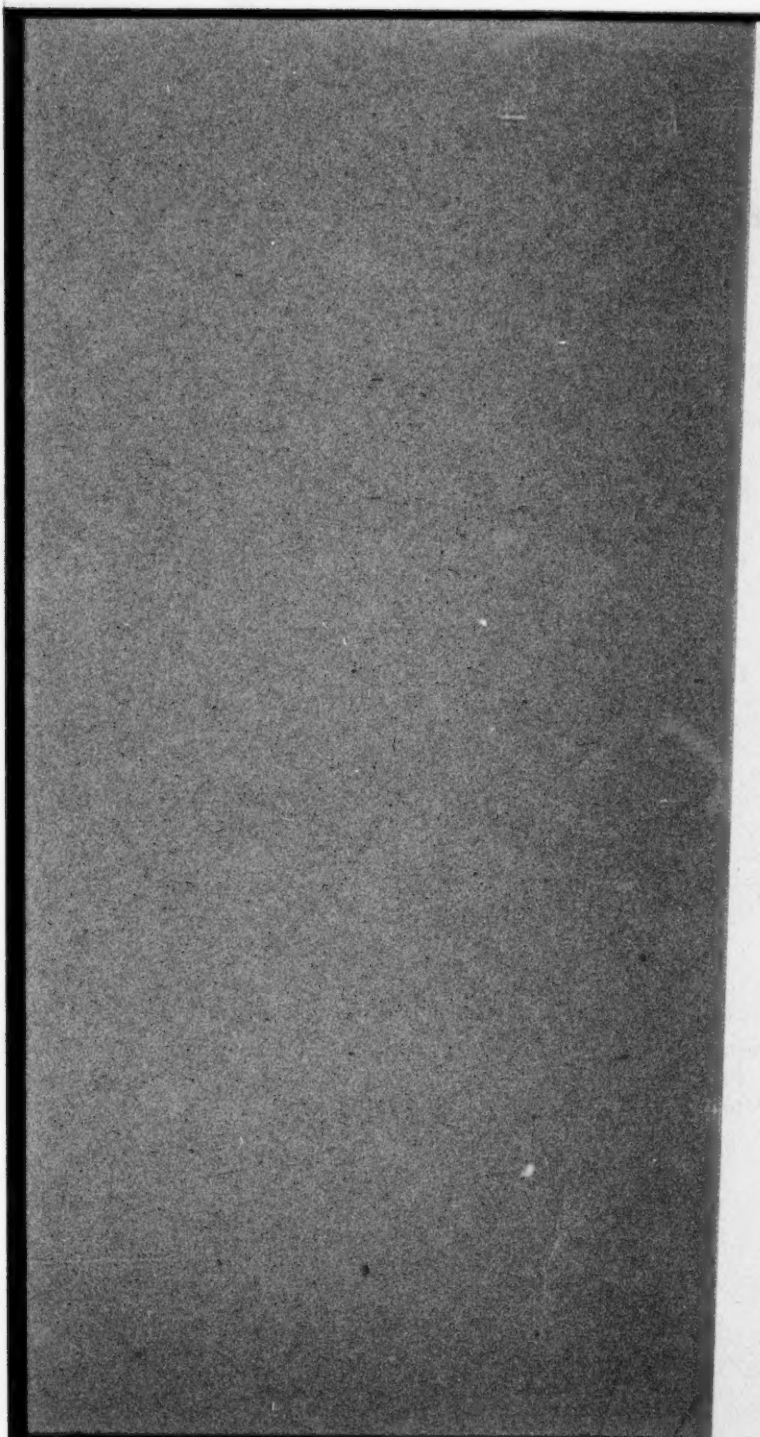
Los Angeles Railway Corporation

Railway Operating Expenses

VI. General and Miscellaneous

(Report of Street Railway Survey, City of Los Angeles, 1925—Table No. XII, Page 113)

1920		1921		1922		1923		1924		1925	
	%	Total	%	Total	%	Total	%	Total	%	Total	%
00	.59	$56,158.65	.88	$56,059.34	.74	$56,719.05	.64	$49,173.95	.52	$51,602.01	.53
54	1.45	132,972.20	1.61	142,383.53	1.88	163,265.94	1.85	148,180.53	1.58	158,470.33	1.62
99	.29	51,329.77	.62	39,026.18	.51	32,067.76	.36	29,880.79	.32	32,818.68	.34
71	.21	18,537.93	.23	19,800.00	.26	19,638.90	.22	20,044.56	.21	22,033.33	.23
55	1.39	125,413.74	1.52	104,277.53	1.37	243,378.02	2.76	141,365.41	1.51	128,468.96	1.31
...	...	.....	...	.....	...	99,385.83	1.13	81,981.66	.87	29,486.63	.30
11	5.16	328,919.32	4.00	262,204.02	3.44	370,058.97	4.19	403,277.28	4.30	360,076.07	3.69
38	...	328.57	...	1,428.56	...	1,611.68	.02	1,600.91	.02	1,898.12	.02
32	.63	92,832.93	1.13	84,218.12	1.11	98,358.90	1.12	58,813.19	.63	47,805.31	.49
24	.49	41,830.34	.51	65,435.73	.86	73,611.38	.83	30,265.32	.32	54,387.57	.55
30	.26	22,622.11	.28	26,174.48	.34	30,453.52	.35	36,914.41	.39	36,352.28	.37
	...	.....	...	.....	...	.....	...	2,500.00	.03	30,000.00	.31
14	10.47	$870,955.56	10.58	$801,007.49	10.51	$1,188,549.95	13.47	$1,003,998.01	10.70	953,399.29	9.76
		Depreciation									
30	6.72	$624,876.53	7.59	$675,699.32	8.86	$712,673.04	8.07	$748,488.00	7.97	$753,262.00	7.71
24	3.36	290,803.46	3.53	301,743.68	3.96	348,339.96	3.95	411,036.00	4.38	517,041.00	5.29
54	10.08	$915,879.99	11.12	$977,442.00	12.82	$1,061,013.00	12.82	$1,159,524.00	12.35	$1,270,303.00	13.00



[fol. 112]

Statement "I"

Schedule of Proposed Rates

Application No. —

Proposed Car-line Tariff

C. R. C. No. — Cancels C. R. C. No. — and supplements thereto. Only one supplement of this tariff will be in effect at any one time.

Los Angeles Railway Corporation

Local and Joint Passenger Tariff Number —, Cancelling Local Passenger Tariff Number —. (See Bus Line Tariff for Fares on Bus Lines)

Naming Fares on Car Lines Between Points on Lines of Los Angeles Railway Corporation in County of Los Angeles, State of California

Fares and arrangements named in this tariff also apply from and to points on the lines of the Pacific Electric Railway Company and the Los Angeles Motor Bus Company, and via their lines, whose concurrences are filed with the Railroad Commission of the State of California, as follows:

Pacific Electric Railway Company.....P. 2, No. 24
Los Angeles Motor Bus Company.....P. 2, No. 2

Issued —— —, ——. Effective —— —, ——.
Issued under authority of the Railroad Commission of the State of California, Decision No. — in Application No. —.
Issued by —— ——.

[fol. 113] Page No. 1

Proposed Car-line Tariff

Table of Contents

General

Application of Fares ..... Item 1, Page 2
Fares for Children ..... Item 2, Page 2
Stopovers ..... Item 3, Page 2
Redemption of Tickets ..... Item 4, Page 2
Baggage ..... Item 5, Page 2
Dogs ..... Item 6, Page 2
School Children's Tickets ..... Item 7, Page 3
Token Fares ..... Item 8, Page 3
One Way Fares ..... Item 9, Page 4
Special Car Rates ..... Item 10, Page 5

[fol. 114] Page No. 2

Proposed Car-line Tariff

Rules and Regulations Governing This Tariff

General

Rules and Regulations governing transfer between rail lines and bus lines are shown in Bus Line Tariff No. — of (Date:) —— —, ——.

Item 1—Application of Fares:

(a) Fares named herein are for continuous passage in either direction and are intermediate in application.

(b) Fares named herein must not be used to make through charge or rate on interstate journey or trip.

Item 2—Fares for Children:

Children under five years of age, when accompanied by parent or guardian, will be carried free of charge; except that not more than two (2) such children will be so carried.

Item 3—Stopovers:

Stopover privileges are not allowed on fares shown in this tariff.

Item 4—Redemption of Tickets:

Unused portion of 40-ride individual school ticket books purchased after May 1 of each year will be exchanged for same number of tickets good for following school year if accompanied by regular school ticket application.

Item 5—Baggage:

Fares named herein do not include the transportation of baggage. Baggage will not be checked and none handled except such hand baggage as can be cared for by passenger without inconvenience to other passengers. Long, bulky or odorously offensive packages, or articles, the nature of which would render the handling thereof a hazard, will not be carried.

Item 6—Dogs:

Dogs will not be carried.

[fol. 115] Page No. 3

Proposed Car-line Tariff

Item 7—School Children's Tickets:

(a) Books containing forty (40) individual school tickets will be sold for $1.40 to persons under eighteen (18) years of age attending free public schools located both within the city of Los Angeles and within the Inner Zone, provided such person present for each book, application therefor on Form 907—TM provided by this corporation, properly filled in, signed by the principal of the school attended, certifying that the person desiring to purchase such ticket is a student of such school, and is under eighteen (18) years of age. Such certificates will be retained by this corporation.

(b) School tickets will be honored for transportation only if book is presented (detached tickets will not be so

honored) by purchaser, and only if purchaser's name appears below contract in book.

(c) School tickets will be honored for transportation within the Inner Zone only, and only between 7:00 A. M. and 6:00 P. M., but will not be honored on Saturdays, Sundays, and other days when such public schools are not in session.

Item 8—Token Fares:

Metal tokens, similar in shape to coins, good for transportation as herein provided for, will be sold at the rate of four (4) for twenty-five (25) cents. Not less than four (4) tokens will be sold at any one sale.

Proposed Car-line Tariff

Item 9—One-way Fares:

One way fares apply between any two points within the zones shown.

Between points in V	And points in >	Inner zone	Second zone	Third zone	Zone boundaries
Inner Zone . . .		7 cents or 6¼ cents by token.	. . . . .	. . . . .	(a) All points on car lines, except in second and third zones.
Second Zone . .		10 cents . .	7 cents or 6¼ cents by token.	. . . . .	(a) Points along South Broadway or Moneta Avenue between Manchester Avenue and 112th Street. (b) Points along Vermont Avenue between Manchester Avenue and 114th Street. (c) Points along Eagle Rock Avenue and Colorado Boulevard between the intersection of Avenue 45 and Eagle Rock Avenue, and intersection of Colorado Boulevard and Townsend Street.

Proposed Car-line Tariff—Continued

Between points in V	And points in >	Inner zone	Second zone	Third zone	Zone boundaries
					(d) Points along Angeles Mesa Drive, private right of way, Market Street, and Hawthorne Boulevard between the intersection of 54th Street and Angeles Mesa Drive, City of Los Angeles, and intersection of Market Street and Arbor Vitae Street in the City of Inglewood. (e) Points along Annandale Boulevard and private right-of-way northerly of Buena Vista Terrace.
Third Zone...		15 cents..	10 cents..	7 cents or 6¼ cents by token.	(a) Points along South Broadway or Moneta Avenue between 112th Street and 116th Street. (b) Points along Vermont Avenue between 114th Street and 116th Street. (c) Points along Hawthorne Boulevard between Arbor Vitae Street, City of Inglewood, and Broadway, City of Hawthorne.

Transfers will be issued as specified thereon, subject to general transfer rules.

[fol. 117] Page No. 5

Proposed Car-line Tariff

Item 10—Special Car Rates:

(a) Five (5) dollars per hour or fraction thereof when used for the ordinary transportation of passengers.

(b) Special rates for special or unusual purposes, according to the use put.

(c) Time under paragraphs (a) and (b) will be computed from time car leaves car-house until its return thereto.

(d) Special car service will be rendered only when equipment and crews are available and not required for regular service.

Proposed Bus Line Tariff

C. R. C. No. — Cancels C. R. C. No. — and supplement thereto. Only one supplement of this tariff will be in effect at any one time.

Los Angeles Railway Corporation

Local and Joint Passenger Bus Tariff No. — (Cancels L. and J. P. B. T. No. — and Supplement Thereto). (See Rail Line Tariff for Fares on Rail Lines)

Naming One-way Bus Line Fares Between Points on Lines of Los Angeles Railway Corporation in County of Los Angeles, State of California

Fares and arrangements named in this tariff also apply from and to points on the lines of the Pacific Electric Railway Company and the Los Angeles Motor Bus Company, and via their lines, whose concurrences are filed with the Railroad Commission of the State of California, as follows:

Pacific Electric Railway Company ..... P. 2, No. 24
Los Angeles Motor Bus Company ..... P. 2, No. 2

Issued —— —, ——. Effective —— —, ——.
Issued under authority of the Railroad Commission of the State of California, Decision No. —, Application No. —.
Issued by —— ——,

Transfers will be issued as specified thereon, subject to general

[fol. 118] Page No. 1

Proposed Bus Line Tariff

Table of Contents

Application of Rates	Item 1, Page 2
Handling of Baggage, Packages and Dogs	Item 2, Page 2
Fares for Children	Item 3, Page 2
Token Fares	Item 4, Page 2
Redemption of Tickets	Item 5, Page 2
Explanation of Abbreviations	Item 6, Page 2
Lines	Item 7, Page 3
Grouping of Bus Lines	Item 8, Page 4
One Way Fares & Transfer Privileges Between Bus and Car Lines of L. A. Railway	Item 9, Page 5
One Way Fares and Transfer Privileges for School Children	Item 10, Page 5
One Way Fares & Transfer Privileges Between Bus & Car Lines of L. A. Ry., Bus Lines of L. A. M. B. and Local Lines of P. E. Ry.	Item 11, Page 6

[fol. 119] Page No. 2

Proposed Bus Line Tariff

Rules and Regulations Governing This Tariff

Item 1—Application of Rates:

(a) Fares named herein are for continuous passage in either direction and are intermediate in application.

(b) Fares named herein must not be used to make through charge or rate on interstate journey or trip.

Item 2—Handling of Baggage, Packages and Dogs:

(a) Fares named herein do not include the transportation of baggage. Baggage will not be checked and none handled except such hand baggage as can be cared for by passenger without inconvenience to other passengers. Long, bulky or odorously offensive packages, or articles, the nature of which would render the handling thereof a hazard, will not be carried.

(b) Dogs will not be carried.

Item 3—Fares for Children:

Children under five years of age, when accompanied by parent or guardian, will be carried free of charge; except that not more than two (2) such children will be so carried.

Item 4—Token Fares:

Metal tokens, similar in shape to coins, good for transportation as herein provided for, will be sold at the rate of four (4) for twenty-five (25) cents. Not less than four (4) tokens will be sold at any one sale.

Item 5—Redemption of Tickets:

Unused portion of 40-ride individual school ticket books purchased after May 1 of each year will be exchanged for same number of tickets good for following school year if accompanied by regular school ticket application.

Item 6—Explanation of Abbreviations:

L. A. M. B. Co.	Los Angeles Motor Bus Company
L. A. Ry.	Los Angeles Railway Corporation
P. E. Ry.	Pacific Electric Railway Company
Blvd.	Boulevard
Ave.	Avenue
St.	Street
Lns.	Lines
Pl.	Place
Pk.	Park
1 z	Inner Zone
2 z	Second Zone
3 z	Third Zone

} As defined in Rail Line Tariff No. — of (Date:) ——, ——.

Proposed Bus Line Tariff

Item 7—Lines:

Line No.	Line name	Termini
14	Alvarado St. Line	North: Alvarado St. & Sunset Blvd. South: Hoover St. & Washington Blvd.
5	Beverly Blvd. Line	East: Beverly Blvd. & Vermont Ave. West: Beverly Blvd. & La Brea Ave.
11	Eagle Rock Line	East: Annandale Blvd. & Buena Vista Terrace. South: Colorado Blvd. & Eagle Rock Blvd.
8	Figueroa St. Line	North: Seventh St. & Olive St. South: Florence Ave. & Figueroa St.
9	Florence Ave. Line	East: Clarendon St. & Pacific Blvd. (Huntington Pk.) West: Florence Ave. & So. Broadway (Los Angeles).
10	Inglewood Line	North: 54th St. & Mesa Drive (Los Angeles). South: Queen St. & Market St. (Inglewood).
15	Manchester Ave. Line	East: Manchester Ave. & Cedar St. West: Queen St. & Market St. (Inglewood).
7	Melrose Ave. Line	East: Melrose Avenue & Western Avenue. West: Melrose Avenue & Orlando Avenue.
13	Normandie Ave. Line	North: 54th St. & Normandie Ave. South: 71st St. & Normandie Ave.

2	No. Lincoln Park Ave. Line	North:	Mercury St. & Sierra St.
		South:	North Broadway & Lincoln Park Ave.
6	Santa Fe Ave. Line	North:	Center Ave. & Santa Fe Ave.
		South:	Florence Ave. & Santa Fe Ave.
1	San Pedro St. Line	North:	59th Pl. & Avalon Blvd.
		South:	Manchester Ave. & San Pedro St.
16	So. Main St. Line	North:	Slauson Ave. & Main St.
		South:	Manchester Ave. & Main St.
12	Washington Blvd. Line	East:	Washington Blvd. & Rimpau Blvd.
		West:	Washington Blvd. & Genessee St.
3	Wilshire Blvd. Line	East:	Fifth & Olive Sts.
		West:	(La Brae Ave. & Country Club Dr.)
			(Fairfax Ave. & Wilshire Blvd.)
			(McCarthy Vista & Eulalia Blvd.)
4	York Blvd. Line	East:	Ave. 50 and York Blvd.
		West:	Glassell Road and York Blvd.

121 Page No. 4

Item 8—Grouping of Bus Lines:

Groups	Bus lines
A	Alvarado St. Bus Line No. 14. Beverly Blvd. Bus Line No. 5—East of Larchmont Ave. Normandie Ave. Bus Line No. 13. North Lincoln Park Ave. Bus Line No. 2. Santa Fe Ave. Bus Line No. 6. San Pedro St. Bus Line No. 1. South Main St. Bus Line No. 16. York Blvd. Bus Line No. 4.
B	Beverly Blvd. Bus Line No. 5—West of Larchmont Ave. Eagle Rock Bus Line No. 11. Florence Ave. Bus Line No. 9. Inglewood Bus Line No. 10. Manchester Ave. Bus Line (East) No. 15—Vermont to Cedar St. Manchester Ave. Bus Line (West) No. 15—Vermont to Queen and Market Sts. Melrose Ave. Bus Line No. 7—East of Fairfax Ave. Washington Blvd. Bus Line No. 12.
C	Figueroa St. Bus Line No. 8. Wilshire Blvd. Bus Line No. 3—East of Fairfax Ave.
D	Melrose Ave. Bus Line No. 7—West of Fairfax Ave.
E	Wilshire Blvd. Bus Line No. 3—West of Fairfax Ave.

[fol. 122] Page No. 5

Proposed Bus Line Tariff

Item 9—One-way Fares and Transfer Privileges Between Bus and Car Lines of L. A. Ry.:

Groups	Fare	Free transfer privileges
A	7¢ cash..... 6¼¢ by token.	Between Group A bus lines and car lines in Inner Zone direct or via Group A bus lines.

Groups	Fare	Free transfer privileges
	7¢ cash	None.
	6¼¢ by token.	Exception; transfers will be honored between Eagle Rock Bus Line No. 11 and "E" car line, good only north of Avenue 45.
B	10¢	(a) Between Group B bus lines and car lines in Inner Zone. (b) Between Group B bus lines and Group A bus lines by direct transfer, or via car lines in Inner Zone.
	10¢ on Line 7 between termini.	None.
C	10¢	(a) Between Group C bus lines and car lines in Inner Zone. (b) Between Group C bus lines and Group A bus lines by direct transfer, or via car lines in Inner Zone.
	7¢ cash 6¼¢ by token.	None.
D	10¢ on Line 7 between termini.	None.
	15¢	(a) Between Group D bus lines and car lines in Inner Zone via Line 7—east of Fairfax Avenue. (b) Between Group D bus lines and Group A bus lines via Line 7—east of Fairfax Avenue and car lines in Inner Zone.
E	5¢	None.

Item 10—One-way Fares and Transfer Privileges for School Children:

40-ride school tickets of Los Angeles Railway issue as per Rail Line Tariff will be accepted on Los Angeles Railway Bus Lines 1-2-4 and 5, and transfer issued as provided above for 7¢ cash or 6¼¢ token fare.

Item 11—One-way Fares and Transfer Privileges Between Bus and Car Lines of L. A. Ry., Bus Lines of L. A. M. B. Local Lines of P. E. Ry.:

Fares	From lines	To lines	Thence to lines
10¢	L. A. Ry. Bus. Lns. 1-2-3-4-5-6-7-13-14-16.....	L. A. Motor Bus Co. Lns.	L. A. Ry. Bus Lns. 1-2-3-4-5-6-7-13-14-16.
	L. A. Ry. Bus. Lns. 1-2-3-4-5-6-7-13-14-16.....	L. A. Motor Bus Co. Lns.	L. A. Motor Bus Co. Lns.
	L. A. Ry. Bus. Lns. 1-2-3-4-5-6-7-13-14-16.....	L. A. Motor Bus Co. Lns.	L. A. Ry. Car Lns. IZ.
	L. A. Ry. Bus. Lns. 1-2-3-4-5-6-7-13-14-16.....	L. A. Motor Bus Co. Lns.	Pacific Electric Ry. Local Cars.*
	L. A. Motor Bus Lines.....	L. A. Motor Bus Co. Lns.	L. A. Ry. Bus Lns. 1-2-3-4-5-6-7-13-14-16.
	L. A. Ry. Car Lines IZ.....	L. A. Motor Bus Co. Lns.	L. A. Ry. Bus Lns. 1-2-3-4-5-6-7-13-14-16.
	P. E. Ry. Local Cars*.....	L. A. Motor Bus Co. Lns.	L. A. Ry. Bus Lns. 1-2-3-4-5-6-7-13-14-16.
	P. E. Ry. Local Cars*.....	L. A. Motor Bus Co. Lns.	L. A. Ry. Car Lines IZ.

For line number see Item 7, page 2, of this tariff.
IZ—Good only in Inner Zone.

Exceptions

(a) Direct transfer between L. A. Railway cars or buses and Pacific Electric Railway cars or buses not permitted. L. A. Motor Bus Company lines must be used as intermediate carrier.
(b) Transfers will not be issued or honored to or from L. A. Motor Bus Company lines east of Sixth and Rampart Boulevard on Sunset Blvd. Line.
(c) If transfer is made to or from L. A. Motor Bus Company's Western Avenue Line, north of Wilshire Boulevard, good to or from Slauson Avenue only; if made at or south of Wilshire Boulevard, good to or from Manchester Avenue only.
(d) On L. A. Railway Line 7, transfer privilege does not apply west of Fairfax Avenue.

*—Good only within local fare zone in which presented; destination to be reached without further transfer.

[fol. 124] EXHIBIT B TO COMPLAINT

Supplemental Application

Before the Railroad Commission of the State of California

No. 13323

In the Matter of the Application of LOS ANGELES RAILWAY CORPORATION, a Corporation, for an Order Readjusting Rates and Establishing Just and Reasonable Rates for the Transportation of Persons on the Company's lines in the State of California.

Supplemental Application for Interim Rates

The petition of the Los Angeles Railway Corporation respectfully shows:

I

That this applicant on November 16, 1926, filed its Application No. 13323 praying that your Honorable Commission make an Order authorizing the establishing of a rate schedule and the collecting of fares based upon a 7¢ basic rate, with the sale of four single-fare tokens for 25¢, including free transfer privilege, as set forth specifically in Exhibits 26 and 26-A, entitled Schedule of Proposed Rates, and amendments thereto.

II

That said application was set for hearing on January 13, 1927, at which time applicant presented its case and introduced Exhibits Nos. 1 to 26-A, showing its complete financial situation, complete and detailed statements of revenues and expenses up to the latest available date and for a period from ten to fifteen years prior thereto; a complete and detailed inventory appraisal and valuation of applicant's property; estimates of rate base and fair return and estimates of results from operation for the years 1926 and 1927, under present rates and under proposed rates; together with such other exhibits as were considered necessary and proper by applicant in support of its application.

III

That said hearing was continued in order to give the Commissioner's departments and the engineers of the City of Los Angeles sufficient time to complete their investigation, and that it was estimated that such investigation would be completed by May 17 of this year; that copies of applicant's exhibits were furnished to all interested parties and to the Commission's and City's engineers and experts engaged in the investigation in connection with this application, and that all of applicant's data, records and forces have been made available to the Commission's and the City's engineers, accountants and other experts.

IV

That at said hearing on January 13, 1927, applicant urged speedy decision on the application and recited the urgent financial and operating necessities of applicant [fol. 125] which made such early decision imperative; and that applicant urged such early decision particularly in view of the long, careful and extremely detailed and costly investigation that for the last four years past and preceding the filing of this application had been carried forward on the initiative and under the direction of your Honorable Commission and jointly by the engineers and experts of the Commission, the engineers and experts of the City of Los Angeles and the forces of the applicant; and that as a result of such joint, detailed and painstaking investigation into all phases of the company's corporate, financial and operating affairs there is before the Commission an amount of authentic and reliable data altogether unusual in cases of this nature and in greater completeness and detail than in other rate cases before the Commission.

V

That on February 14, 1923, your Honorable Commission initiated by letter to this applicant and to the Pacific Electric Railway Company the so-called Los Angeles Transportation Survey, and in connection therewith the valuation of the local transportation system, said letter concluding as follows:

"We are of the opinion, in view of the increasing number of complaints which are reaching us and of the increasing urgency of the problem, that a survey as outlined should be made as promptly as possible. We should prefer to have such a survey made in cooperation with the Los Angeles City authorities, because it is clear that the City, regardless of legal jurisdiction, has a prepondering interest and should have a voice in all matters relating to street railway service. There is no dispute, on the other hand, as to the sole and complete jurisdiction of this Commission in the matter of rates. It is equally clear to the Commission that whatever the jurisdictional aspect may be, the problem of rates and the problem of service cannot be separated in practice, the one being dependent upon the other. Holding these views, we suggest that an investigation substantially as outlined in our chief engineer's memorandum of October 9, 1922, be promptly undertaken.

Will you kindly confirm the understanding contained in this letter and arrange with us (and with the city authorities of Los Angeles, in case they desire to participate), in conference or by letter, for the prompt undertaking of the proposed work.

Yours very truly, Railroad Commission of the State of California, by C. L. Seavey, President."

That as a result of said letter said transportation survey was undertaken in accordance with the memorandum of the California Railroad Commission dated March 8, 1923, which said memorandum is in evidence in this proceeding and in part reads as follows:

"In accordance with the letter of the California Railroad Commission of February 14, 1923, the resolution of the City Council of Los Angeles of February 21, 1923, and letters of Pacific Electric Railway Company of February 19, 1923, and the Los Angeles Railway Corporation of February 21, 1923, to the California Railroad Commission, it is agreed that the survey shall include the following subjects and shall be handled in the following manner:

[fol. 126] A. Subjects and Scope of Survey:

I. The survey shall follow substantially the memorandum dated October 9, 1922, attached to the letter of the California Railroad Commission of February 14, 1923.

II. The survey will naturally divide itself into several parts:

(a) Valuation

(b) Matters dealing with service, operation revenues, expenses, capital expenditures and other financial and accounting matters

(c) Improvements and extensions, both as regards street railway service and bus service.

III. In accordance with this outline, the following work is to be done:

(1) Inventory and valuation of Los Angeles Railway Corporation as of March 31, 1923, segregated as between operative and non-operative property; property inside city limits and outside city limits; inventory divided and valuation figures segregated as between company track divisions, and showing separately property jointly owned and operated. The valuation shall show the following estimates (all as of March 31, 1923):

(a) Historical reproduction Cost.

(b) Historical reproduction cost less depreciation.

(c) Reproduction cost new.

(d) Reproduction cost new less depreciation.

These estimates shall be made in accordance with the usual definitions of the California Railroad Commission and the Board of Public Utilities.

It is understood that the inventory and valuation shall be made in such form as to permit a keeping current of the valuation, and that the Los Angeles Railway Corporation will arrange to have the valuation kept current subsequent to March 31, 1923."

VI

That in compliance with this memorandum, and extending over a period of three years and at a cost to applicant in excess of $100,000, said detailed inventory and valuation and said detailed operating and service survey was

made under the direction of the Commission's chief engineer, and in cooperation with the City's and the Company's engineers.

VII

That in compliance with the terms of the memorandum above referred to there was filed with your Honorable Commission and with the Board of Public Utilities and Transportation of the City of Los Angeles, in December, 1924, detailed inventory and appraisal in four large volumes of all of applicant's property and on October 23, 1925, there was filed with your Honorable Commission, and with the Board of Public Utilities and Transportation of the City of Los Angeles the complete Joint Report on the Street Railway Survey of the City of Los Angeles, consisting of eight volumes and appendix; that subsequent to December, 1924, said complete and detailed joint valuation of applicant's property was revised and brought to later dates [fol. 127] from time to time, the original date of said appraisal and valuation having been March 31, 1923, and such revisions and bringing down to date of the valuations have been made, particularly, as of June 30, 1924 (in connection with this applicant's application No. 10303 in the reorganization proceeding now pending before your Honorable Commission); again as of December 31, 1924 (in the Joint Survey Report as of October 23, 1925, above referred to); again as of December 31, 1926, in connection with the present proceeding (applicant's Exhibit No. 20), and again at this time, in connection with this present supplemental application, when said detailed valuation and appraisal and all other exhibits dealing with service, operating and financial conditions are brought to the latest available date, namely March 31 and April 30, 1927, respectively.

VIII

That in view of this history and in view of this record and having further in mind the fact that for the last past three years at least a force of Commission's engineers and accountants of from two to ten and a smaller force of engineers of the City of Los Angeles have been continually at work, largely at this applicant's expense and at a total expense to applicant in excess of $150,000, on the appraisal

and valuation and on the operating and service studies above referred to, it cannot be said that applicant has been remiss or not sufficiently diligent in placing at the Commission's and the City's disposal every avaliable fact and estimate having a bearing on the pending application, and it cannot be said that the Commission or the City or the Commission's engineering and other departments, or the Board of Public Utilities and Transportation of the City of Los Angeles or the engineers of said Board, are uninformed or have insufficient or incomplete or unreliable information pertaining to all the affairs of this company and all facts and estimates upon which there may speedily be based a just and fair decision in the present supplemental application.

IX

That on July 22, 1924, this applicant filed with your Honorable Commission its petition for an order authorizing a reorganization of applicant's corporate and financial structure to the end that applicant might be put in a position to refinance itself and permanently finance itself in order to meet its own and this growing city's urgent needs for increased and adequate transportation facilities.

X

That said application, No. 10303, has been pending since July 22, 1924, and is now pending before your Commission, and that this applicant understands and is aware of the fact that said application cannot be granted by your Commission by reason of earnings insufficient under existing rates to justify or permit a re-organization of its present financial structure and the issuance of new and additional securities, and that such urgent re-financing cannot be accomplished until applicant's earning conditions improve, and that such earning conditions cannot possibly improve until applicant's rates are increased as prayed for in the present proceeding and increased to a point where applicant is permitted to earn a fair and reasonable return on a fair and reasonable rate base commensurate with the character [fol. 128] and kind of the service applicant is rendering to the people of the City of Los Angeles and the other communities it serves.

XI

That applicant, therefore, finds itself in this serious and intolerable position:

First. It is unable to go forward with the urgently required capital expenditures for improved and extended service, because of its inability to issue, without the permission of your Honorable Commission, the necessary securities;

Second. It cannot hope to get its permit for the issuance of such required securities and for such imperative financial reorganization until it can make its showing to the Commission of sufficient and adequate earnings;

Third. It cannot possibly make such showing of sufficient and adequate earnings until the Commission makes a decision in the pending rate application and permits the fixing of rates that will produce a fair return on the proper rate base;

Fourth. Finally, that pending such action by the Commission, this applicant is compelled to suffer a steadily increasing loss amounting at a minimum of $2,500,000 in the present year 1927 and having amounted to a minimum of $2,000,000 in the past year 1926.

XII

That on March 28, 1927, the City Council of the City of Los Angeles employed for the purposes of this proceeding Dr. Delos F. Wilcox of New York to make an independent study and report on the issues presented in this proceeding, and that Dr. Wilcox' preliminary report has been presented to the City Council of Los Angeles, and has been printed and widely distributed among the public; that copies of such report have been furnished applicant; that aside and apart from the methods used and the principles followed by Dr. Wilcox in reaching his results and conclusions and aside and apart from any disagreement by applicant with, and any rejection of, such methods and principles, there appears as a finding of fact in said preliminary report in paragraph four the following:

"In 1924 the company earned the equivalent of 7½% on this investment; in 1925 about 5% and in 1926 about four per cent, after operating expenses, taxes and annual depreciation, figured on the straight-line basis."

Further, Dr. Wilcox in paragraph six of his report makes the following statement:

"It seems clear that if the Railroad Commission follows its own valuation precedents it will take as the rate base historical reproduction cost without depreciation; and the appraisal made by the joint board of engineers on this basis, with additions from the books, points to a figure in excess of $40,000,000. Even if the commission restricts the annual depreciation allowance to the sinking fund basis, as it has done in other cases, an allowance of an eight per cent return would call for an increase of more than $1,000,000 a year in revenue."

And further, Dr. Wlicox, with reference to the importance of the City of adequate street railway facilities and service, in paragraph eight of his report makes this statement:

[fol. 129] "In regard to the future of the street railway it is a fact that many people expect this means of transportation soon to become obsolete and to give way entirely to motor bus operation. I do not share this view, and I believe that in the general expectation of technical men most familiar with the subject, the street railway as a means of mass transportation will not be supplanted in the near future, if ever, in large cities by the motor bus. It is true that during the last few years the growth of street railway traffic has been checked and in some places an actual decrease in the number of revenue passengers has developed, due no doubt to the intense competition of private and public automobiles. Yet the history of traffic in Los Angeles furnishes no ground for the opinion that the street car is becoming obsolete. The bus lines here are carrying only 5 or 6 per cent of the total number of revenue passengers carried by public transportation systems, and most of the busses are being operated at a heavy loss. Although it is said to be a fact that this community now has more automobiles per capita than any other large urban center in the United States, nevertheless the number of

passengers carried by the Los Angeles Railway is greater now than at any time prior to 1923. Looking at the matter from the city's standpoint, I do not think that there is enough uncertainty about the future of the street railway to warrant the city in adopting a negative policy with respect to municipal ownership on that account. No doubt the day of large profits in urban transportation is past, whether under private or under public ownership. It would be foolish for the city to undertake the function of local transportation with the idea of making a lot of money out of it. But public transportation is so essential to the convenience and welfare of the community, and its benefits go so far beyond the individuals who personally use these transportation facilities, that in a peculiar sense it is appropriate for the community as a whole to undertake the function of transportation and sustain and develop it as a matter of public policy. The very dearth of profits in the electric railway business renders private agencies unequal to the task of adequately serving public needs. Street railways at the present time can thrive only upon conservative investments, modest rates of return and the highest practicable efficiencies in operation."

XIII

That it is necessary to point out that in reaching the rates of earnings quoted in the preceding paragraph, Dr. Wilcox uses a rate base and a property value for rate making purposes totally inadequate and insufficient in applicant's opinion and below a fair and reasonable rate base by an amount in excess of $10,000,000, and that he uses methods and principles in reaching his rate base that are totally at variance with and in contradiction to the methods prescribed and the principles laid down by the law of the land and the Constitution of this State and of the United States, and in all valuation proceedings for rate making purposes by your Honorable Commission; by all other State commissions and by the Interstate Commerce Commission, and by all of the State and Federal courts of the [fol. 130] land, including the United States Supreme Court; but that notwithstanding the use of such erroneous, unjust and unfair methods and principles the findings of Dr. Wilcox clearly establish the fact that for 1924, 1925 and 1926

this applicant was unable by large amounts to earn a sufficient and adequate return, and earned a return totally inadequate and confiscatory, and that the return on the basis of Dr. Wilcox' figures for the current year 1927 will be even lower than the return of 4% calculated by him and under his methods for the past year 1926.

XIV

That applicant desires it distinctly understood that it does not subscribe to or agree with any of the methods used by Dr. Wilcox, but that even with the use of such erroneous and confiscatory methods the inadequate and confiscatory earnings for the last three years past and at the present time are clearly established, and established in the light of the available evidence beyond any reasonable doubt.

XV

That there are now available for your Honorable Commission the following valuation and rate base figures:

Basis	Reproduction cost new	Reproduction cost new less depreciation: Straight-line basis	Reproduction cost new less depreciation: Sinking-fund basis	Historical cost	Rate base
(1) Operative Property, including Materials and Supplies, but excluding Construction Work in Progress, Working Capital, Going Concern, and Additional Capital required (figures agreed upon by Commission, City of Los Angeles, and Company engineers, exclusive of Company's claims) as of March 31, 1923 (Exhibit 9-A)	46,654,247	33,960,569	.....	33,417,032	.....
(2) Same as (1), including Company's claims, but excluding Construction Work in Progress, Working Capital and Going Concern, and Additional Capital required as of December 31, 1923 (Exhibit 9-A)	49,247,715	35,897,209	.....	34,913,602	.....
(3) Valuation figures agreed upon by Engineers of California Railroad Commission, City of Los Angeles and Company, as of December 31, 1924, including Materials and Supplies, but excluding Work in Progress, Working Capital, Going Concern, and Additional Capital required, and exclusive of Company's claims (Exhibit 9)	54,256,795	39,998,891	.....	41,678,050	.....
(4) Same as (3), including Company's claims, but excluding Work in Progress, Working Capital, Going Concern, and Additional Capital required, as of December 31, 1924 (Exhibit 9)	57,850,263	42,796,773	.....	43,174,620	.....

Valuation and Rate-base Figures Before Commission—Continued

Basis	Reproduction cost new	Reproduction cost new less depreciation: Straight-line basis	Reproduction cost new less depreciation: Sinking-fund basis	Historical cost	Rate base
(5) Company's valuation as of December 31, 1926, including Materials and Supplies, but not including Work in Progress, Working Capital, Going Concern, and Additional Capital required (Exhibit 20)	58,796,027	39,774,264	46,082,926	44,695,098	.....
(6) Company rate base as of December 31, 1926, including Operative Property, Working Capital, Going Concern, and Additional Capital required, based on Reproduction Cost New less Depreciation, Sinking Fund Method (Exhibit 20)	.....	.....	.....	.....	51,094,981
(7) Same as (6), based on Reprod. Cost New less Depr., Straight-line method (Exhibit 20)	.....	.....	.....	.....	44,786,319
(8) Same as (6), based on Reprod. Cost New less Depr., 70% Condition, Exhibit 20	.....	.....	.....	.....	46,169,274
(9) Same as (6), based on Historical Reproduction Cost (Exhibit 20)	.....	.....	.....	.....	49,707,153
(10) Commission's Engineering Department's valuation figures as of Dec. 31, 1926, including Materials and Supplies and Work in Progress, but not including Working Capital, Going Value, and Additional Capital required, and making no allowance for Company's claims (Commission's Exhibit 1)	54,041,749	37,187,648	.....	41,914,052	.....
(11) Dr. Carlos F. Wilcox rate base valuation as of 1926, based on Historical Reproduction Cost, but deducting $4,750,000 of land value and $7,250,000 invested from depreciation reserve, and making no allowance for working capital, construction work in progress, going concern, and additional capital required (Dr. Wilcox report)					31,000,000

[fol. 132] That in addition applicant will show that if the valuation and rate base figures introduced in applicant's Exhibit No. 20 are brought to the date of March 31, 1927, including work in progress and materials and supplies as of that date, and making allowances for working capital, for going concern, and for minimum net capital expenditures required on a basis similar to the one used in applicant's Exhibit No. 20, the present rate base on the basis of historical reproduction cost will amount to $52,365,841 and on the basis of the reproduction cost new less depreciation, straight line method to $48,343,308.

XVI

That it is clearly apparent from the foregoing tabulation that a fair, just and reasonable rate base as of the present time and the fair, just and reasonable value of this applicant's property at this time devoted to the public service must necessarily lie somewhere between the minimum figure (clearly inadequate, unjust, unfair and unreasonable, in applicant's opinion) of $31,000,000 and the figure which applicant believes and avers to be the just, fair and reasonable rate base, based on historical reproduction cost, of approximately $52,000,000.

XVII

That any just, fair and reasonable rate base to be found by the Commission in this proceeding cannot possibly, and regardless of minor adjustments in detail, be an amount less than the sum of $41,914,052, which is the historical reproduction cost as determined by the Commission's engineering department in Commission's Exhibit No. 1, introduced in this proceeding, and that this amount does not as yet include any allowance whatsoever for the so-called company's claims for additional tangible property as set forth in applicant's Exhibit No. 20, nor any allowance for working capital, for going value or for capital expenditures required in the immediate future.

XVIII

That it is clearly apparent without any further study or investigation that a fair return of 8% on the Commission's

engineering department's valuation figure referred to in the previous paragraph (which is an inadequate, incomplete, unjust and unfair rate base), amounts to $3,353,124.

XIX

That it is equally apparent that applicant's actual earnings available for fair return, after actual and necessary operating expenses and taxes in the year 1925, amounted to but $1,523,763 and in the year 1926 amounted to $1,281,-598.

XX

That applicant's estimate of the amount available for fair return for the year 1927, as shown in applicant's Exhibit No. 21, is $1,264,650, and that in the light of the four month's actual earning and operating experience of applicant since the preparation of Exhibit No. 21, and with the completion at this time of the depreciation study made by the Company's and the Commission's Engineers and based on Historical Cost, straight line method. This estimate of available fair return is excessive and will in fact not exceed $700,000 and that it will fall short by at least $2,500,000 of the total fair return that applicant is entitled to earn upon a fair rate base and is able to earn if fair and reasonable rates are permitted to go into effect by your Honorable Commission.

[fol. 133] XXI

That there are attached hereto and marked Statement "A" and Statement "B" respectively, exhibits showing the outstanding funded debt of applicant as of March 31, 1927, and the outstanding floating debt as of the same date; that the outstanding funded debt, less bonds in sinking funds, amounted on that date to $24,852,000 and that the outstanding floating debt consisting of loans and notes payable amounted on that date to $5,695,807.75 which later amount does not include matured and accrued unpaid bond interest and interest on loans and notes in the additional sum of $4,766,108.33;

XXII

That applicant's interest payments on funded and unfunded debt made in the year 1926, amounted to $1,465,304.10, and that such similar interest payments for funded and unfunded debt for the current year 1927 will amount to a much larger sum by reason of the steadily and rapidly mounting floating debt such interest on present outstanding floating debt running at the rate of approximately $320,000 per year, notwithstanding the fact that the rate of interest on the floating, unsecured debt of applicant averages at the comparatively low interest rate of approximately 5½% per annum.

XXIII

That there is attached hereto Statements "C" and "D" and "E" being applicant's consolidated balance sheet of March 31, 1927, and income and profit and loss statement for the year 1926, and statement of revenues and expenses for the year 1926, showing that the operating income available for the payment of interest and for fair return in the year 1926 amounted to $1,281,598, whereas the interest payments on unfunded debt, without inclusion of any sinking fund payments, in 1926 amounted to $1,465,304 and showing that applicant fell short in 1926 by $183,706 to earn its interest on funded and unfunded debt.

XXIV

That there is attached hereto Statement "F" marked "Estimate of Results from Operations for the year 1927 under Present Fares" showing that in the present year the operating income available for interest and fair return will be $691,882 and indicating that applicant will fail to earn its interest charges on funded and unfunded debt by an amount in the neighborhood of $1,000,000.

XXV

That with such showing of past, present and prospective earnings applicant finds it increasingly difficult and believes that it will presently become impossible to continue to fi-

nance future urgent capital expenditures from the proceeds of unsecured loans, and that its credit will be permanently and irreparably jeopardized and injured; and that as a consequence of such impairment of credit and inability to finance, it will be increasingly difficult, if not impossible, for applicant to continue the betterments and extensions of its property and its service as applicant is willing and anxious to do; and that such a condition will work a serious and irreparable injury not only to applicant but also to the patrons it serves and to the City of Los Angeles and the other communities served by its lines.

[fol. 134] XXVI

That applicant has presented evidence showing that the fair value of its property devoted to the service of the public for rate making purposes is not less than $45,000,000; that 8% is a fair rate of return and that the earnings required under such rate of fair return will amount to $3,600,000.

XXVII

That the Commission's own Engineering Department has accumulated evidence showing that the fair value of applicant's property for rate making purposes as of December 31, 1926, including work in progress and materials and supplies is, on the historical reproduction cost basis approximately $41,900,000, and on the reproduction cost new less depreciation basis approximately $37,200,000, and that if there is added to these figures the additional work in progress as of March 31, 1927, the two rate base figures will become respectively, approximately $42,400,000 and $37,700,000; and that no allowance is made in any of these figures by the Commission's Engineering Department for working capital, going concern value or additional capital expenditures required in the immediate future, nor is there any allowance made for the so-called company's claims in the original valuation as of March 31, 1923, amounting to approximately $1,500,000 for the historical reproduction cost figure and $2,600,000 for the reproduction cost new less depreciation figure; that on such partial and incom-

plete rate base as determined by the Commission's Engineering Department a rate of return of 8% will require a fair return of not less than $3,380,000 on the historical basis and approximately $3,000,000 on the reproduction cost new less depreciation basis.

XXVIII

That as a matter of fact the applicant's actual return in 1926 amounted to $1,281,598 which sum is equal to an 8% return on a rate base of $16,019,900 and that the return for 1927 will be $691,882, equivalent to an 8% return on a rate base of $8,648,525; that in view of these facts and the other facts heretofore presented to the Commission an emergency exists which urgently requires that the rates of applicant be immediately and forthwith adjusted; and that such emergency consists in part of the following:

(a) that as of March 31, 1927, the current liabilities of applicant amounted to $11,029,379.06, including loans and notes payable to the amount of $5,695,807.75 and matured interest unpaid amounting to $4,468,275 and that applicant is unable to continue to finance itself through open account and must forthwith reorganize its financial structure in order to finance itself and to secure the additional capital urgently required through long term bonds issued under proper mortgages;

(b) that applicant is now engaged in carrying out a program of additions, betterments and replacements requiring during the next three years a minimum of capital expenditures of over $6,000,000; more than $2,000,000 of this total having been already definitely decided upon and authorized; and that such capital expenditure program cannot go forward unless additional revenue is provided;

[fol. 135] (c) that applicant under existing rates has not during the year 1926, and cannot during the present year earn its present fixed charges, making impossible any refinancing until the present emergency is met;

(d) that applicant for the last two years by reason of its inability to earn a fair return has been permanently and irreparably damaged to an amount of not less than four million dollars ($4,000,000), and will be permanently and

irreparably damaged in the present year to an amount of not less than two and three quarter million dollars ($2,750,000) and that applicant's present inability is continuing solely and exclusively by reason of the failure of the Commission to permit the collecting of rates sufficient to produce a fair return on a fair and reasonable and readily determinable rate base;

(e) that applicant's application for a rate increase with complete valuation, financial, operating, service and other statistical data has been on file with the Commission for more than six months; that its full evidence was submitted more than four months ago; that a detailed inventory, appraisal and valuation of the company's property made under the Commission's direction and supervision and jointly prepared and submitted by the Commission's, the city's and the company's forces has been on file with the Commission for over two years; that an exhaustive and detailed report on the street railway situation in the City of Los Angeles and of all of this applicant's corporate, financial, operating and service affairs was jointly made upon the direction and initiative of the Commission and the Board of Public Utilities and Transportation of the City of Los Angeles and at an expense to the company largely in excess of $100,000 and filed with the Commission on October 23, 1925;

(f) that the evidence above referred to and other evidence including the annual reports and other data on file with the Commission, furnish a full and complete basis of fact, not subject to challenge or contradiction, showing that this applicant is fully entitled to an immediate increase in its rates and furnishes a sufficient and reliable basis to permit your Honorable Commission forthwith to fix such rates;

(g) that the credit and financial standing of applicant will be seriously and irreparably damaged if applicant is not given relief forthwith;

(h) that applicant is being irreparably damaged by the continuance of the present rates which in effect constitutes a most serious and continuous confiscation of its property;

(i) that the interests of the public are being jeopardized and damaged by the real and imminent danger to the finan-

cial standing of applicant and its resulting inability to continue to improve and extend its service as required by the continuous growth of the city and the demand of its patrons and by the willingness of applicant to render the best possible service at the lowest reasonable rates.

[fol. 136]

XXIX

That because of the existing emergency and pending the Commission's and city's investigation in this proceeding, applicant prays your Honorable Commission for immediate approval and authorization to make effective on June 1st of this year the temporary rate schedule attached hereto and marked "Statement No. H." This schedule is based upon a six cent basic fare, including free transfer privilege and upon adjustment of interurban and other fares as shown in Statement H.

XXX

That applicant is aware and realizes that such temporary emergency rate cannot and will not produce a reasonable and fair return upon any reasonable or fair rate base, but is willing, nevertheless, to put into immediate effect, temporarily, such inadequate rates and accept, temporarily, such inadequate and insufficient return praying and expecting, however, that the Commission will continue and expedite such detailed investigation as it may see fit to make in the original proceeding to the end that a permanent, fair and reasonable rate, or rates, be fixed which will produce a fair and reasonable return upon a fair and reasonable rate base and upon the fair value of applicant's property used in the service of the public.

XXXI

That applicant believes and avers that the making effective of the proposed temporary rate schedule referred to in paragraph XXIX will in the twelve months following the proposed effective date of June 1st of this year produce a total railway operating revenue of approximately $13,500,000 which is an estimated increase over the 1926 revenue of

approximately $1,400,000. If this estimated gross revenue is realized it will result in an estimated return after reasonable operating expenses and taxes available for interest and other fair return purposes of somewhat more than $2,000,000 which is less than 5% on the lowest possible fair rate base, in applicant's opinion, of $45,000,000.

Wherefore applicant prays that this Honorable Commission forthwith adjust the rates of applicant in accordance with the schedule shown in Statement H attached hereto, so that applicant may continue to function; said temporary emergency rate to continue until a final decision in the matter of Application No. 13323 is had, and for such other and further relief and order as may be just and reasonable.

Los Angeles Railway Corporation, by George J. Kuhrts, Vice-President and General Manager. Gibson, Dunn & Crutcher, by S. M. Haskins, Attorneys for Applicant.

[fol. 137] Dated Los Angeles, California, May 16, 1927.

Attached

Statement A—Los Angeles Railway Corporation and City Railway Company of Los Angeles Consolidated Statement of Funded Debt, March 31, 1927.

" B—Los Angeles Railway Corporation & City Railway Company of Los Angeles Floating Debt—March 31, 1927.

" C—Consolidated Balance Sheet March 31, 1927.

" D—Los Angeles Railway Corporation & City Railway Company of Los Angeles Income and Profit and Loss Statement Year 1926.

" E—Statement of Revenues and Expenses for the Year 1926.

" F—Estimates of Results from Operations for the Year 1927 Under Present Fares.

Statement G—Estimate of Operating Results for Twelve Months Period Following Effective Date of Proposed Temporary Emergency Rates (basic 6% fare).

" H—Schedule of Proposed Rates to Accompany Supplemental Application for Interim Rates.

[fol. 138] STATE OF CALIFORNIA,
County of Los Angeles, ss:

George J. Kuhrts, being first duly sworn, deposes and says: That he is Vice President and General Manager of Los Angeles Railway Corporation, the applicant in the proceeding above entitled; that he has read the foregoing Supplemental Application and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information or belief, and as to those matters he believes it to be true.

George J. Kuhrts.

Subscribed and sworn to before me this 16th day of May, 1927. Paul F. Koehl, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

[fol. 139] Supplemental Application No. 13323

Statement "A"

Los Angeles Railway Corporation and City Railway Company of Los Angeles

Consolidated Statement of Funded Debt, March 31, 1927

Funded Debt:		
Los Angeles Traction Company	$250,000.00	
Los Angeles Railway Company	4,722,000.00	
Los Angeles Railway Corporation	14,880,000.00	
City Railway Company of Angeles	5,000,000.00	
		$24,852,000.00
Less Bonds in Sinking Funds:		
Los Angeles Railway Corporation	2,588,000.00	
City Railway Company of Los Angeles	1,367,000.00	
		3,955,000.00
Total Funded Debt		$20,897,000.00

R. O. C. May, 1927.

Statement "B"

Los Angeles Railway Corporation & City Railway Company of Los Angeles, Floating Debt—

March 31, 1927

Loans and Notes Payable

(Los Angeles Railway Corporation Notes)

Date of note		Date due	Rate of interest	Amount
Jan. 11, 1927.	First National Bank	4/11/27	5%	$100,000.00
Jan. 22, 1927.	First National Bank	4/22/27	5%	200,000.00
Feb. 10, 1927.	First National Bank	5/11/27	5%	100,000.00
Mar. 8, 1927.	First National Bank	6/ 6/27	5%	100,000.00
Jan. 1, 1925.	H. E. H. Int. to H. E. H.	1/ 2/25	5%	100,000.00
Mar. 1, 1925.	H. E. H. Int. to H. E. H.	3/ 2/25	5%	67,000.00
July 12, 1926.	H. E. H. Int. to H. E. H., Newport News	6/12/27	5%	500,000.00
Dec. 15, 1926.	H. E. H. Int. to H. E. H., P. S. T. & S. B.	6/15/27	5%	172,000.00
Feb. 1, 1923.	Hunt. Land & Impr. Co	6/ 1/23	6%	487,000.00
May 31, 1923.	Hunt. Land & Impr. Co	6/ 1/23	6%	78,000.00
Jan. 2, 1924.	Hunt. Land & Impr. Co	1/ 3/24	6%	200,000.00
Jan. 29, 1924.	Hunt. Land & Impr. Co	7/29/24	6%	200,000.00

Aug.	13, 1924.	Hunt. Land & Impr. Co	8/14/24	6%	200,000.00	
Jan.	29, 1925.	Hunt. Land & Impr. Co	1/30/25	6%	200,000.00	
Mar.	16, 1925.	Hunt. Land & Impr. Co	3/17/25	6%	38,232.64	
Dec.	1, 1926.	Hunt. Land & Impr. Co	12/ 2/26	6%	150,000.00	
Aug.	13, 1924.	Redondo Improvement Co.	8/14/24	6%	100,000.00	
Nov.	15, 1926.	Willard-Brent Co., Inc.	10/15/27	6%	7,385.25	
Dec.	15, 1926.	Willard-Brent Co., Inc.	11/15/27	6%	7,527.12	
Dec.	15, 1926.	Willard-Brent Co., Inc.	11/15/27	6%	10,340.62	
Jan.	15, 1927.	Willard-Brent Co., Inc.	12/15/27	6%	13,083.30	
Jan.	15, 1927.	Willard-Brent Co., Inc.	12/15/27	6%	8,272.50	
Feb.	15, 1927.	Willard-Brent Co., Inc.	1/15/28	6%	15,689.25	
Mar.	15, 1927.	Willard-Brent Co., Inc.	2/15/28	6%	11,668.50	
Mar.	15, 1927.	Willard-Brent Co., Inc.	2/15/28	6%	1,500.00	
Jan.	27, 1922.	Pacific Mutual Life Ins. Co.	1/27/30	6%	400,000.00	
						$3,467,699.18

(City Railway Co. of Los Angeles Notes)

Jan.	27, 1927.	A. W. Arlin	12/27/27	6%	$17,680.00	
Feb.	12, 1927.	A. W. Arlin	1/12/28	6%	17,680.00	
Mar.	24, 1927.	A. W. Arlin	2/24/28	6%	17,680.00	
Sept.	11, 1926.	Bethlehem Steel Co.	8/11/27	6%	50,095.99	
June	21, 1926.	Fageol Motors Co.	5/21/27	6%	32,670.00	
Aug.	9, 1926.	Fageol Motors Co.	7/ 9/27	6%	32,670.00	
Sept.	15, 1926.	Fageol Motors Co.	8/15/27	6%	74,571.00	
Nov.	4, 1926.	Fageol Motors Co.	10/ 4/27	6%	21,780.00	
Dec.	20, 1926.	Fageol Motors Co.	11/20/27	6%	44,600.00	
Mar.	12, 1927.	Fageol Motors Co.	2/12/28	6%	18,240.00	

Statement "B"—Continued

Date of note		Date due	Rate of interest	Amount	
Jan. 14, 1927.	First National Bank	4/14/27	5%	100,000.00	
Feb. 1, 1927.	First National Bank	5/ 2/27	5%	100,000.00	
Feb. 5, 1927.	First National Bank	5/ 6/27	5%	100,000.00	
Mar. 14, 1927.	First National Bank	6/12/27	5%	100,000.00	
May 15, 1926.	Mack Inter. Mtr. Truck Corp.	4/15/27	6%	13,343.45	
Mar. 19, 1927.	U. S. Steel Products Co.	2/19/28	6%	48,489.38	
Oct. 13, 1926.	Yellow Mfg. Sales Corp.	9/13/27	6%	10,650.20	
Oct. 30, 1926.	Yellow Mfg. Sales Corp.	9/30/27	6%	10,800.00	
Feb. 14, 1927.	Yellow Mfg. Sales Corp.	1/14/28	6%	27,290.55	
Mar. 11, 1927.	Yellow Mfg. Sales Corp.	2/11/28	6%	43,918.00	
					882,158.57
	H. E. Huntington—Open Account				1,345,950.00
	Total Loans and Notes Payable				$5,695,807.75

Other Accounts

Audited Accounts and Wages Payable	$530,730.39
Bond Interest Matured and Unpaid	4,468,275.00
Accrued Interest	297,833.33
Bonus Suspense	36,261.72
Miscellaneous	470.87
Accrued Surplus Appropriation for Sinking Fund—Company Bonds	546,370.83
Total	$11,575,749.89

[fol. 141]

Supplemental Application No. 13323

Los Angeles Railway Corporation

Statement "C"

Consolidated Balance Sheet, March 31, 1927

Assets

	L. A. Ry. Corp.	City Ry. Co.	Total
Investments:			
Road and Equipment	$50,229,127.13	$19,098,385.04	$69,327,512.17
Sinking Fund	2,630,098.58	1,411,241.69	4,041,340.27
Investment in Affiliated Cos.	20,000.00	.....	20,000.00
Other Investments	6,000.00	.....	6,000.00
Total	52,885,225.71	20,509,626.73	73,394,852.44
Current Assets:			
Cash	47,079.07	.....	47,079.07
Loans and Notes Receivable	9,115,927.96	.....	*17,542.92
Accounts Receivable	62,040.00	.....	62,040.00
Materials and Supplies	853,529.57	.....	853,529.57
Other Current Assets	95,242.29	.....	95,242.29
Total	10,173,818.89	.....	1,075,433.85

Statement "C"—Continued

	L. A. Ry. Corp.	City Ry. Co.	Total
Deferred Assets	63,741.83	.....	63,741.83
Unadjusted Debits	273,501.38	.....	273,501.38
Total Assets	$63,396,287.81	$20,509,626.73	$74,807,529.50
Liabilities			
Capital Stock	20,000,000.00	5,000,000.00	25,000,000.00
Funded Debt	19,852,000.00	5,000,000.00	24,852,000.00
Current Liabilities:			
Loans and Notes Payable	5,695,807.75	9,098,385.04	*5,695,807.75
Audited Accts. & Wages Payable	530,730.39	.....	530,730.39
Matured Interest Unpaid	4,468,275.00	.....	4,468,275.00
Accrued Interest	297,833.33	.....	297,833.33
Other Current Liabilities	36,732.59	.....	36,732.59
Total	11,029,379.06	9,098,385.04	11,029,379.06

*After Inter Company Elimination of $9,008,385.04.

Tax Liability	55,560.93	.....	55,560.93
Accrued Depreciation	7,660,963.29	.....	7,660,963.29
Unadjusted Credits	33,613.55	.....	33,613.55
Corporate Surplus:			
Funded Debt Retired	278,000.00	.....	278,000.00
Sinking Fund Reserve	3,176,469.41	1,411,241.69	4,587,711.10
Total Appropriated Surplus	3,454,469.41	1,411,241.69	4,865,711.10
Profit and Loss Balance	1,310,301.57	.....	1,310,301.57
Total	4,764,770.98	1,411,241.69	6,176,012.67
Total Liabilities	$63,396,287.81	$20,509,626.73	$74,807,529.50

[fol. 142] Supplemental Application No. 13323

Statement "D"

Los Angeles Railway Corporation & City Railway Company of Los Angeles

Income and Profit and Loss Statement, Year 1926

Operating Income:	L. A. Ry. Corp.	City Ry. Co.	Total
Railway Operating Revenues	$13,021,482.46	.....	$13,021,482.46
Railway Operating Expenses	10,930,998.57	.....	10,930,998.57
Net Revenue—Railway Operations	2,090,483.89	.....	2,090,483.89
Taxes Assignable to Railway Operations	807,925.78	.....	807,925.78
Operating Income	1,282,558.11	.....	1,282,558.11
Non-Operating Income:			
Income from Lease of Road	.....	350,000.00	350,000.00
Income from Sinking Funds	148,347.18	61,793.35	210,140.53
Miscellaneous Income	1,039.74	.....	1,039.74
	149,386.92	411,793.35	561,180.27
Gross Income	1,431,945.03	411,793.35	1,843,738.38

Deductions from Gross Income:			
Rent for Leased Roads	350,000.00	.....	350,000.00
Miscellaneous Rents	1,050.00	.....	1,050.00
Interest on Funded Debt	992,600.00	250,000.00	1,242,600.00
Interest on Unfunded Debt	222,704.10	.....	222,704.10
Total Ded. from Gross Income	1,566,354.10	250,000.00	1,816,354.10
Income Trans. to Profit & Loss	$134,409.07†	161,793.35	$27,384.28

Profit and Loss Statement

Credit Balance at Beginning of Year	$1,925,679.97	$104,900.00†	$1,820,779.97
Credit Balance Transferred from Income Acct.	134,409.07†	161,793.35	27,384.28
Donations	29,057.11	.....	29,057.11
Miscellaneous Credits	2,344.53	104,900.00	107,244.53
	1,822,672.54	161,793.35	1,984,465.89
Appropriations of Surplus to Sinking Funds	292,747.18	161,793.35	454,540.53
Loss on Road and Equipment Retired	9,870.66	.....	9,870.66
Miscellaneous Debits	*121,511.24	.....	121,511.24
Total Debits	424,129.08	161,793.35	585,922.43
Credit Balance December 31, 1926	$1,398,543.46	.....	$1,398,543.46

This statement includes Los Angeles Railway Bus Operations and Company's share of Los Angeles Motor Bus Operations.

[†Red in copy.]

*Includes $104,900.00 offset to Miscellaneous credit shown under City Railway Co.

[fol. 143]

Supplemental Application No. 13323

Los Angeles Railway Corporation

Statement "E"

Statement of Revenue and Expenses for the Year 1926

Rail Operations:	Estimate per original Exhibit No. 7	Actual	Actual over estimate (Increase—Black) (Decrease—Red)
Railway Operating Revenue:			
Revenue From Transportation	$11,991,456	$11,992,346	$890
Other Revenue	125,974	126,113	139
Total	12,117,430	12,118,459	1,029
Railway Operating Expenses:			
Operating Expenses	8,492,349	8,530,274	37,925
Depreciation	1,282,349	1,282,350	1
Total	9,774,698	9,812,624	37,926
Net Operating Revenue	2,342,732	2,305,835	36,897*
Taxes	745,000	763,829	18,829
Operating Income (Rail)	1,597,732	1,542,006	$55,726*

Bus Operations:			
Los Angeles Railway:			
Operating Revenue	567,304	565,152	$1,882*
Operating Expenses	751,012	752,859	1,847
Net Loss Before Taxes	183,978	187,707	3,729
Taxes	24,394	24,447	53
Operating Loss	208,372	212,154	3,782
Los Angeles Motor Bus Company:			
Operating Revenue	673,697	675,921	2,224
Operating Expenses	726,434	731,335	4,901
Net Loss Before Taxes	52,737	55,414	2,677
Taxes	19,663	39,307	19,644
Operating Loss	72,400	94,721	22,321
Los Angeles Railway Corp. Proportion (Approximately 50%)	36,200	48,254	12,054
Total Loss Bus Operation	244,572	260,408	15,836
Operating Income Rail and Bus 1926	$1,353,160	$1,281,598	$71,562*

[*Red in copy.]

[fol. 144] Supplemental Application No. 13323

Los Angeles Railway Corporation

Statement "F"

Estimates of Results from Operations for the Year 1927 under Present Fares

Rail Operations:

Railway Operating Revenues:		
Revenue from Transportation		12,000,000
Other Revenue		125,000
Total Operating Revenue		12,125,000
Railway Operating Expenses:		
Way and Structures	950,000	
Equipment	1,197,200	
Power	1,050,000	
Conducting Transportation	4,541,500	
Traffic	29,500	
General & Miscellaneous	913,500	
Total	8,681,700	

Depreciation	1,695,418*		
Total Operating Expenses (Rail)		10,377,118	
Net Operating Revenue		1,747,882	
Taxes		740,000	
Operating Income (Rail)			$1,007,882
Bus Operations:			
Los Angeles Railway:			
Operating Revenue	760,000		
Operating Expenses	993,000		
Net Loss Before Taxes	233,000		
Taxes	44,000		
Operating Loss (L. A. Railway Bus)		277,000	

*Straight line depreciation based on valuation—Historical Reproduction Cost.

Statement "F"—Continued

Los Angeles Motor Bus Company:			
Operating Revenue	740,000		
Operating Expenses	770,000		
Net Loss Before Taxes	30,000		
Taxes	48,000		
Operating Loss	78,000		
Los Angeles Railway Company Proportion (Approximately 50%)		39,000	
Total Loss Bus Operations			316,000
Estimated Operating Income for 1927 (Rail and Bus)			$691,882

Equivalent to 8% return on $8,648,525.

[fol. 145] Supplemental Application No. 13323

Los Angeles Railway Corporation

Statement "G"

Estimate of Operating Results for Twelve Months Period Following Effective Date of Proposed Temporary Emergency Rates (Basic 6-cent Fare)

Rail Operations:	
Railway Operating Revenue:	
Revenue From Trans. (1926 plus 20%)	$14,390,000
Other Revenue	125,000
Total Operating Revenue	14,515,000
Railway Operating Expenses	10,377,118
Net Operating Revenue	4,137,882
Taxes (based on 1926 revenue)	740,000
Operating Income (Rail)	3,397,882
Bus Operations:	
Net Loss From Bus Operations (L. A. Ry. and L. A. M. B.)	300,000
Gross Operating Income—Rail & Bus	3,097,882
Curtailment In Traffic Due to Rate Increase:	
5% Curtailment of Traffic	719,500
Operating Income With 5% Curtailment in Traffic	2,378,382
Equivalent to 8% return on $29,729,775.	
7½% Curtailment of Traffic	1,079,250
Operating Income With 7½% Curtailment in Traffic	2,018,632
Equivalent to 8% Return on $25,232,900.	

[fol. 146] Los Angeles Railway Corporation

Application No. 13323

Schedule of Proposed Rates to Accompany Supplemental Application for Interim Rates

Statement "H"

Proposed Car-line Tariff

C. R. C. No. — cancels C. R. C. No. — and supplements thereto. Only one supplement of this tariff will be in effect at any one time.

Los Angeles Railway Corporation

Local and Joint Passenger Tariff Number —, Cancelling Local Passenger Tariff Number —. (See Bus Line Tariff for Fares on Bus Lines)

Naming Fares on Car Lines Between Points on Lines of Los Angeles Railway Corporation in County of Los Angeles, State of California

Fares and arrangements named in this tariff also apply from and to points on the lines of the Pacific Electric Railway Company and the Los Angeles Motor Bus Company, and via their lines, whose concurrences are filed with the Railroad Commission of the State of California, as follows:

Pacific Electric Railway Company..... P. 2, No. 24
Los Angeles Motor Bus Company..... P. 2, No. 2

Issued —— —, ——. Effective —— —, ——.
Issued under authority of the Railroad Commission of the State of California, Decision No. —, in Application No. —.
Issued by —— ——.

[fol. 147] Page No. 1

Proposed Car-line Tariff

Table of Contents

General

Application of Fares	Item 1, Page 2
Fares for Children	Item 2, Page 2
Stopovers	Item 3, Page 2
Redemption of Tickets	Item 4, Page 2
Baggage	Item 5, Page 2
Dogs	Item 6, Page 2
School Childrens' Tickets	Item 7, Page 3
One Way Fares	Item 8, Page 4
Special Car Rates	Item 9, Page 5

[fol. 148] Page No. 2

Proposed Car-line Tariff

Rules and Regulations Covering This Tariff

General

Rules and Regulations governing transfer between rail lines and bus lines are shown in Bus Line Tariff No. — of (Date:) —— —, ——.

Item 1—Application of Fares:

(a) Fares named herein are for continuous passage in either direction and are intermediate in application.

(b) Fares named herein must not be used to make through charge or rate on interstate journey or trip.

Item 2—Fares for Children:

Children under five years of age, when accompanied by parent or guardian, will be carried free of charge; except that not more than two (2) such children will be so carried.

Item 3—Stopovers:

Stopover privileges are not allowed on fares shown in this tariff.

Item 4—Redemption of Tickets:

Unused portion of 40-ride individual school ticket books purchased after May 1 of each year will be exchanged for same number of tickets good for following school year if accompanied by regular school ticket application.

Item 5—Baggage:

Fares named herein do not include the transportation of baggage. Baggage will not be checked and none handled except such hand baggage as can be cared for by passenger without inconvenience to other passengers. Long, bulky or odorously offensive packages, or articles, the nature of which would render the handling thereof a hazard, will not be carried.

Item 6—Dogs:

Dogs will not be carried.

[fol. 149] First Revised Page No. 3

Proposed Car-line Tariff

Item 7—School Childrens' Tickets:

(a) Books containing forty (40) individual school tickets will be sold for $1.20 to persons under eighteen (18) years of age attending free public schools located both within the Inner Zone, provided such person present for each book, application therefor on form provided by this corporation, properly filled in, signed by the principal of the school attended, certifying that the person desiring to purchase such ticket is a student of such school, and is under eighteen (18) years of age. Such certificates will be retained by this corporation.

(b) School tickets will be honored for transportation only if book is presented (detached tickets will not be so honored) by purchaser, and only if purchaser's name appears below contract in book.

(c) School tickets will be honored for transportation within the Inner Zone within the city of Los Angeles only, and only between 7:00 A. M. and 6:00 P. M., but will not be honored on Saturdays, Sundays, and other days when such public schools are not in session.

[fol. 150]

Proposed Car-line Tariff

Item 8—One-way Fares:

One-way fares apply between any two points within the zones shown.

Between points in V	And points in >	Inner zone	Second zone	Third zone
Inner Zone....		6 cents...	.....	.....

Zone boundaries

(a) All points on car lines, except in second and third zones.

(a) Points along South Broadway or Moneta Avenue between Manchester Avenue and 112th Street.

(b) Points along Vermont Avenue between Manchester Avenue and 114th Street.

(c) Points along Eagle Rock Avenue and Colorado Boulevard between the intersection of Avenue 45 and Eagle Rock Avenue, and intersection of Colorado Boulevard and Townsend Street.

Page 4—Continued

Between points in V	And points in >	Inner zone	Second zone	Third zone	Zone boundaries
Second Zone...		10 cents...	6 cents...	.....	(d) Points along Angeles Mesa Drive, private right of way, Market Street, and Hawthorne Boulevard between the intersection of 54th Street and Angeles Mesa Drive, City of Los Angeles, and intersection of Market Street and Arbor Vitae Street in the City of Inglewood. (e) Points along Annandale Boulevard and private right-of-way northerly of Buena Vista Terrace.
Third Zone....		15 cents...	10 cents...	6 cents..	(a) Points along South Broadway or Moneta Avenue between 112th Street and 116th Street. (b) Points along Vermont Avenue between 114th Street and 116th Street. (c) Points along Hawthorne Boulevard between Arbor Vitae Street, City of Inglewood, and Broadway, City of Hawthorne.

Transfers will be issued as specified thereon, subject to general transfer rules.

[fol. 151] Page No. 5

Proposed Car-line Tariff

Item 9—Special Car Rates:

(a) Five (5) dollars per hour or fraction thereof when used for the ordinary transportation of passengers.

(b) Special rates for special or unusual purposes, according to the use put.

(c) Time under paragraphs (a) and (b) will be computed from time car leaves car-house until its return thereto.

(d) Special car service will be rendered only when equipment and crews are available and not required for regular service.

[fol. 152] Proposed Bus Line Tariff

C. R. C. No. — cancels C. R. C. No. — and Supplement thereto. Only one supplement of this tariff will be in effect at any one time.

Los Angeles Railway Corporation

Local and Joint Passenger Bus Tariff No. — (Cancels L. and J. P. B. T. No. — and Supplement Thereto)

(See Rail Line Tariff for Fares on Rail Lines)

Naming One Way Bus Line Fares Between Points on Lines of Los Angeles Railway Corporation in County of Los Angeles, State of California

Fares and arrangements named in this tariff also apply from and to points on the lines of the Pacific Electric Railway Company and the Los Angeles Motor Bus Company, and via their lines, whose concurrences are filed with the Railroad Commission of the State of California as follows:

Pacific Electric Railway Company.....P. 2, No. 24
Los Angeles Motor Bus Company.....P. 2, No. 2

Issued ——, ——. Effective ——, ——.
Issued under authority of the Railroad Commission of the State of California, Decision No. —, in Application No. —.
Issued by ——.

[fol. 153] Page No. 1

Proposed Bus Line Tariff

Table of Contents

Application of Rates	Item 1, Page 2
Handling of Baggage, Packages and Dogs	Item 2, Page 2
Fares for Children	Item 3, Page 2
Redemption of Tickets	Item 4, Page 2
Explanation of Abbreviations	Item 5, Page 2
Lines	Item 6, Page 3
Grouping of Bus Lines	Item 7, Page 4
One Way Fares & Transfer Privileges Between Bus and Car Lines of L. A. Railway	Item 8, Page 5
One Way Fares and Transfer Privileges for School Children	Item 9, Page 5
One Way Fares & Transfer Privileges Between Bus & Car Lines of L. A. Ry., Bus Lines of L. A. M. B. and Local Lines of P. E. Ry.	Item 10, Page 6

[fol. 154] Page No. 2

Proposed Bus Line Tariff

Rules and Regulations Governing This Tariff

Item 1—Application of Rates:

(a) Fares named herein are for continuous passage in either direction and are intermediate in application.

(b) Fares named herein must not be used to make through charge or rate on interstate journey or trip.

Item 2—Handling of Baggage, Packages and Dogs:

(a) Fares named herein do not include the transportation of baggage. Baggage will not be checked and none handled except such hand baggage as can be cared for by passenger without inconvenience to other passengers. Long, bulky or odorously offensive packages, or articles, the na-

ture of which would render the handling thereof a hazard, will not be carried.

(b) Dogs will not be carried.

Item 3—Fares for Children:

Children under five years of age, when accompanied by parent or guardian, will be carried free of charge; except that not more than two (2) such children will be so carried.

Item 4—Redemption of Tickets:

Unused portion of 40-ride individual school ticket books purchased after May 1 of each year will be exchanged for same number of tickets good for following school year if accompanied by regular school ticket application.

Item 5—Explanation of Abbreviations:

L. A. M. B. Co.	Los Angeles Motor Bus Company.
L. A. Ry.	Los Angeles Railway Corporation.
P. E. Ry.	Pacific Electric Railway Company.
Blvd.	Boulevard.
Ave.	Avenue.
St.	Street.
Lns.	Lines.
Pl.	Place.
Pk.	Park.
1 z	Inner Zone
2 z	Second Zone
3 z	Third Zone

As defined in Rail Line Tariff No.— of (Date:) —— — ——.

[fol. 155] Second Revised Page No. 3

Proposed Bus Line Tariff

Item 6—Lines:

Line No.	Line name	Termini
14.	Alvarado St. Line	North: Alvarado St. & Sunset Blvd. South: Hoover St. & Washington Blvd.
5.	Beverly Blvd. Line	East: Beverly Blvd. & Vermont Ave. West: Beverly Blvd. & Harper Ave.
11.	Eagle Rock Line	East: Annandale Blvd. & Buena Vista Terrace. South: Colorado Blvd. & Eagle Rock Blvd.
8.	Figueroa St. Line	North: Seventh St. & Olive St. South: Manchester Ave. & Figueroa St.
9.	Florence Ave. Line	East: Clarendon St. & Pacific Blvd. (Huntington Pk.) West: Florence Ave. & So. Broadway (Los Angeles).
10.	Inglewood Line	North: 54th St. & Mesa Drive (Los Angeles). South: Queen St. & Market St. (Inglewood).
15.	Manchester Ave. Line	East: Manchester Ave. & Cedar St. West: Queen St. & Market St. (Inglewood).
7.	Melrose Ave. Line	East: Melrose Ave. & Western Ave. West: Melrose Ave. & Orlando Ave.

18. Mines Ave. & Whittier Blvd. Line.....	East:	Whittier Blvd. & Simmons Ave.
	West:	E. Seventh St. & Los Angeles Street.
3. Normandie Ave. Line.....	North:	54th St. & Normandie Ave.
	South:	Florence Ave. & Normandie Ave.
2. No. Lincoln Park Ave. Line.....	North:	Mercury St. & Sierra St.
	South:	North Broadway & Lincoln Park Ave.
6. Santa Fe Ave. Line.....	North:	Center Ave. & Santa Fe Ave.
	South:	Florence Ave. & Santa Fe Ave.
1. San Pedro St. Line.....	North:	59th Pl. & Avalon Blvd.
	South:	Manchester Ave. & San Pedro St.
16. So. Main St. Line.....	North:	Slauson Ave. & Main St.
	South:	Manchester Ave. & Main St.
17. Verdugo Road Line	North:	Verdugo Road & Plumas Ave.
	South:	Verdugo Road & Glassell Ave.
12. Washington St. Line	First:	Washington St. & Rimpau Blvd.
	Second:	Adams St. & Alsace Ave.
3. Wilshire Blvd. Line.....	East:	Fifth St. & Olive St.
	West:	(La Brae Ave. & Country Club Dr.)
		(Fairfax Ave. & Wilshire Blvd.)
		(McCarthy Vista & Eulalia Blvd.)
4. York Blvd. Line.....	East:	Ave. 50 and York Blvd.
	West:	Glassell Ave. and York Blvd.

[fol. 156]

Second Revised Page No. 4

Proposed Bus Line Tariff

Item 7—Grouping of Bus Lines:

Group	Bus lines
A	Alvarado St. Bus Line No. 14.
	Beverly Blvd. Bus Line No. 5—East of Larchmont Ave.
	Normandie Ave. Bus Line No. 13.
	North Lincoln Park Ave. Bus Line No. 2.
	Santa Fe Ave. Bus Line No. 6.
	San Pedro St. Bus Line No. 1.
	South Main St. Bus Line No. 16.
	York Blvd. Bus Line No. 4.
B	Beverly Blvd. Bus Line No. 5—Between Larchmont Ave. & Fairfax Ave.
	Eagle Rock Bus Line No. 11.
	Florence Ave. Bus Line No. 9.
	Inglewood Bus Line No. 10.
	Manchester Ave. Bus Line (East) No. 15—Vermont to Cedar St.
	" " " " (West) No. 15—Vermont to Queen and Market Sts.
	Melrose Ave. Bus Line No. 7—East of Fairfax Ave.
	Verdugo Road Line No. 17.

Washington-Adams Bus Line No. 12.

C Figueroa St. Bus Line No. 8.
Mines Ave. & Whittier Blvd. Bus Line No. 18.
Wilshire Blvd. Bus Line No. 3—East of Fairfax Ave.

D Melrose Ave. Bus Line No. 7—West of Fairfax Ave.
Beverly Blvd. Bus Line No. 5—West of Fairfax Ave.

E Wilshire Blvd. Bus Line No. 3—West of Fairfax Ave.

[fol. 157] First Revised Page No. 5

Proposed Bus Line Tariff

Item 8—One Way Bus Fares and Transfer Privileges Between Bus and Car Lines of L. A. Ry.:

Group	Fare	Free transfer privileges
A	6¢.....	Between Group A bus lines and car lines in Inner Zone direct or via Group A bus lines.
	6¢.....	None. Exception; transfers will be honored between Eagle Rock Bus Line No. 11 and "E" car line, good only north of Avenue 45.
B	10¢.....	(a) Between Group B bus lines and car lines in Inner Zone. (b) Between Group B bus lines and Group A bus lines by direct transfer, or via car lines in Inner Zone.
	10¢ between adjacent zones on Lines 5, 7 and 15	None.
C	10¢.....	(a) Between Group C bus lines and car lines in Inner Zone. (b) Between Group C bus lines and Group A bus lines by direct transfer, or via car lines in Inner Zone. NOTE.—Does not apply between Group C bus lines.
	6¢.....	None.

First Revised Page No. 5—Continued

Group	Fare	Free transfer privileges
D	10¢ between adjacent zones on Lines 5 and 7	None.
	15¢.....	(a) Between Group D bus lines and car lines in Inner Zone via Lines 5 or 7 (East of Fairfax Avenue). (b) Between Group D bus Lines and Group A bus lines via Lines 5 or 7 (East of Fairfax Avenue) and car lines in Inner Zone.
E	5¢.....	None.

Item 9—One Way Fares and Transfer Privileges for School Children:

40-ride school tickets of Los Angeles Railway issue as per Rail Line Tariff will be accepted on Los Angeles Railway Bus Lines 1-2-4-5- (east of Larchmont Blvd.) and 16, and transfer issued as provided above for 6-cent fare.

[fol. 158]

First Revised Page No. 6

Proposed Bus Line Tariff

Item 10—One-way Fares and Transfer Privileges Between Bus and Car Lines of L. A. Ry., Bus Lines of L. A. M. B. and Local Lines of P. E. Ry.:

Fares	From lines	To lines	Thence to lines
10¢	L. A. Ry. Bus Lns. 1-2-3-4-5-6-7-13-14-16	L. A. Motor Bus Co. Lns...	L. A. Ry. Bus Lns. 1-2-3-4-5-6-7-13-14-16.
	L. A. Ry. Bus Lns. 1-2-3-4-5-6-7-13-14-16	L. A. Motor Bus Co. Lns...	L. A. Motor Bus Co. Lns.
	L. A. Ry. Bus Lns. 1-2-3-4-5-6-7-13-14-16	L. A. Motor Bus Co. Lns...	L. A. Ry. Car Lns. IZ.
	L. A. Ry. Bus Lns. 1-2-3-4-5-6-7-13-14-16	L. A. Motor Bus Co. Lns...	Pacific Electric Ry. Local Cars.*
	L. A. Motor Bus Lines	L. A. Motor Bus Co. Lns...	L. A. Ry. Bus Lns. 1-2-3-4-5-6-7-13-14-16.
	L. A. Ry. Car Lines IZ	L. A. Motor Bus Co. Lns...	L. A. Ry. Bus Lns. 1-2-3-4-5-6-7-13-14-16.
	P. E. Ry. Local Cars*	L. A. Motor Bus Co. Lns...	L. A. Ry. Bus Lns. 1-2-3-4-5-6-7-13-14-16.
	P. E. Ry. Local Cars*	L. A. Motor Bus Co. Lns...	L. A. Ry. Car Lns. IZ.

For line number see Item 7, page 2, of this tariff.

IZ—Inner Zone.

*—Good only within local fare zone in which presented ; destination to be reached without further transfer.

Exceptions

(a) Direct transfer between L. A. Railway cars or busses and Pacific Electric Railway cars or busses not permitted. L. A. Motor Bus Company lines must be used as intermediate carrier.

(b) Transfers will not be issued or honored to or from L. A. Motor Bus Company's lines east of Sixth and Rampart Boulevard on Sunset Blvd. Line

(c) If transfer is made to or from L. A. Motor Bus Company's Western Avenue Line, north of Wilshire Boulevard, good to or from 54th Street only; if made at or south of Wilshire Boulevard, good to or from Manchester Avenue only.

(d) On L. A. Railway Lines 3, 5, & 7, transfer privilege does not apply west of Fairfax Avenue.

[fol. 159] EXHIBIT "C" TO COMPLAINT

Decision and Order No. 18531

Decision No. 18531

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of LOS ANGELES RAILWAY CORPORATION, a Corporation, for an Order Readjusting Rates and Establishing Just and Reasonable Rates for the Transportation of Persons on the Company's Lines in the State of California

Application No. 13323

Supplemental Application for Interim Rates

S. M. Haskins and Paul R. Watkins of Gibson, Dunn & Crutcher, for the applicant.

Jess E. Stephens, City Attorney; Milton Bryan, Deputy City Attorney; and J. L. Ronnow, Deputy City Attorney, for the City of Los Angeles.

George A. Damon, for City Planning Association.

Carl Bush and E. F. Bogardis, for Hollywood Chamber of Commerce.

W. H. Engel, in propria person-.

Clyde Woodworth, City Attorney for City of Inglewood and City of Hawthorne.

Opinion

LOUTTIT, Commissioner:

On May 17, 1927, Los Angeles Railway Corporation filed, in the above entitled matter, a supplemental application in which it asks permission to immediately increase its rates as set forth in Statement "H" attached to the supplemental petition as modified by stipulations appearing in the transcript. The proposed schedule of rates is based upon a six per cent basic fare including free transfer privileges and certain adjustments in the company's bus

fares, such increased rates to remain in effect until a final decision is entered in this proceeding.

The Los Angeles Railway Corporation filed its application for readjustment of its rates on November 16, 1926. Hearings on such application have been had on the following dates: January 13; May 17; May 18 and May 28. An adjourned hearing is set for August 9th. At the hearing had on May 28th the application for interim rates was taken under submission.

Applicant urges that, pending the final determination of the issues raised by Application No. 13323, it is not earning a fair return on its property devoted to public use and that it is confronted with an emergency which requires an immediate adjustment of its rates. Applicant reports that it is confronted by an emergency in that as of March 31, 1927, its current liabilities amounted to $11,029,379.06 including loans and notes payable to the amount of $5,695,807.75 and matured interest unpaid of $4,468,275.00; that it is unable to continue to finance itself through open account and must forthwith reorganize its financial structure in order to finance itself and to secure additional capital urgently required through long term bonds issued under proper mortgages; that it is engaged on a three [fol. 160] year construction program which calls for a minimum expenditure of $6,000,000.00; that it can not go forward with this program unless additional revenue is provided; that under existing rates it has not during 1926 and cannot during the present year earn its present fixed charges, making impossible any refinancing until the present emergency is met; that for the last two years by reason of its inability to earn a fair return it has been permanently and irreparably damaged to an amount of not less than $4,000,000.00 and will be damaged during the present year to an amount of not less than $2,750,000.00, and that the interests of the public are being jeopardized by the fact that applicant can not install the improvements required by the growth of the City of Los Angeles.

It is urged by applicant that long and protracted investigations have been made of its affairs by Commission and City engineers and that it has submitted a full and complete case showing that it is entitled to an immediate increase in rates.

Applicant's current liabilities in the main represent expenditures for additions and betterments. The fact that it has $4,468,275.00 of unpaid interest does not mean that such interest was not earned. In Exhibit 32 applicant shows a credit to profit and loss of $1,310,301.57. As to the damage that applicant reports it has suffered during the past two years and which it says it will suffer during the present year, that is dependent upon what is a proper rate base, a proper rate of return, a proper allowance for operating expenses and depreciation. In other words, a determination of the extent to which applicant has been damaged, if at all, requires a determination of the major issues in this proceeding. As to the 1927 loss, applicant in its original supplemental petition, Statement "F", shows a return of $691,882.00. At the hearing had on May 17-18, it developed that applicant had duplicated its depreciation charges. When its attention was called to that fact it withdrew statement "H" and substituted Exhibit 45-a, which shows a return of $970,083.00.

Exhibit 45-a and other financial exhibits have been examined by me and accepting for the purpose of this decision applicant's estimated operating expenses for 1927, I find that it will have available after the payment of operating expenses (excluding depreciation) taxes, interest and sinking funds, the sum of $847,400.00. If it were decided that the sinking fund payment, other than the interest on the bonds held alive in the sinking funds, constitutes the refunding of a capital obligation and therefore should not be paid out of earnings the sum of $234,300.00 should be added to the $847,400.00, making a total of $1,081,700.00 available for depreciation. An analysis of the company's records shows that the largest amount it ever charged to depreciation reserve because of the retirement of property was $759,290.00. There is nothing in the record to show what the charges to the depreciation reserve will be during 1927. While Exhibit 41 shows the amount that will be charged to operation and depreciation on account of the three year construction program, such amount was not segregated between charges to maintenance accounts and depreciation reserve. Neither is there any satisfactory explanation in the record of the material increase in the company's operating expenses from 1923 to date.

[fol. 161] I have reviewed the evidence submitted by applicant in so far as it relates to the supplemental application referred to herein and in my opinion applicant is not confronted by an emergency which necessitates the increase of its rates, pending a decision on its application to readjust rates. The adjourned hearing is set for August ninth and it is expected that the application can be taken under submission at the conclusion of that hearing.

I herewith submit the following form of order.

Order

Los Angeles Railway Corporation having filed a supplemental application in the above entitled matter for permission to increase its rates which are to continue in effect until a final decision is entered in this matter (Application No. 13323), and the Commission having considered the evidence submitted by applicant in support of such request and being of the opinion that Los Angeles Railway Corporation is not confronted by an emergency which warrants an increase in its rates pending said final decision and that therefore the supplemental application should be denied, therefore,

It is hereby ordered that the supplemental application filed by Los Angeles Railway Corporation on May 17, 1927, in Application No. 13323 be, and the same is hereby, denied without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of June, 1927.

Ezra W. Decoto, H. W. Brundige, C. L. Seavey, Thos. S. Louttit, Commissioners.

Certified as a true copy. H. G. Mathewson, Secretary Railroad Commission, State of California.

[fol. 162] EXHIBIT "D" TO COMPLAINT

Decision and Order No. 19521

Decision No. 19521

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of LOS ANGELES RAILWAY CORPORATION, a Corporation, for an Order Readjusting Rates and Establishing Just and Reasonable Rates for the Transportation of Persons on the Company's Lines in the State of California

Application No. 13323

S. M. Haskins and Paul R. Watkins of Gibson, Dunn and Crutcher, for the Appellant.

Jess E. Stephens, City Attorney, Milton Bryan, Deputy City Attorney, and J. L. Ronnow, Deputy City Attorney, for the City of Los Angeles.

George A. Damon, for City Planning Association.

Carl Bush and E. F. Bogardis, for Hollywood Chamber of Commerce.

W. H. Engel, in propria persona.

Clyde Woodworth, City Attorney, for the City of Inglewood and City of Hawthorne.

Opinion

LOUTTIT, Commissioner:

The Los Angeles Railway Corporation, a street railway operating in and about the City of Los Angeles, filed with this Commission, on November 17th, 1926, an application whereby permission is sought to increase the rates of fare charged upon its street railway, as set forth in the schedule marked Statement "I," attached to the application, as modified by supplemental schedules submitted in evidence.

In general, permission is asked to increase the present basic fare of five (5) cents to seven (7) cents with the sale of four (4) single fare tokens for twenty-five (25) cents. No request was made to increase the present ten (10) cent bus fare.

Hearings on this matter were held in Los Angeles during 1927, on January 13th, May 17th, 18th and 28th, and on August 9th, 10th and 11th. At the hearing held on August 11th the matter was taken under submission.

A number of very detailed and thorough studies, covering elements of value, financial results from operation and rates, were prepared and presented in evidence by witnesses representing the City of Los Angeles, applicant, and the engineering department of this Commission, respectively.

The evidence presented has been given careful consideration. The determination of fair value for rate making purposes calls for the exercise of judgment and, in reaching the conclusion hereinafter stated, all factors having a bearing upon the value of the property involved have been considered and such weight has been given to each as seems proper under the evidence of record. Forty-two million dollars ($42,000,000) is the highest figure that may reasonably be accepted as a rate hase. This figure covers fully [fol. 163] the undepreciated cost of the Company's property with land at present day values. A considerable portion of the Company's property was acquired or constructed during the period of high prices and allowance is made for such cost. It includes property constructed by funds set aside in the depreciation reserve. Furthermore, there must be taken into consideration the unsatisfactory franchise condition of the Company discussed in In re Los Angeles Railway Corporation (19 C. R. C. 980), as to which there is no evidence of any improvement. These facts make the acceptance of any higher estimate of a rate base, than that herein adopted, unjustified. The figure of Forty-two million Dollars ($42,000,000) includes an allowance for materials and supplies of approximately Seven hundred and fifty thousand Dollars ($750,000) and for work in progress of approximately Two hundred and fifty thousand Dollars ($250,000).

A careful consideration of all the evidence justifies the following findings of fact:

1. That a reasonable rate base to be used for the purpose of computing a fair return upon the operative property of this Company is the sum of Forty-two million Dollars ($42,000,000).

2. That the financial results from the operation of applicant's property, under present operating methods, for the year 1927, based upon estimates contained in the record, may be fairly stated as follows:

Total Operating Revenues	$13,254,000
Total Operating Expense, including depreciation, computed on a 5% sinking fund basis, and taxes	11,183,739
Net income available for return	2,070,261

3. That the average annual rate of return earned by applicant for the five-year period ending December 31st, 1926, has been approximately 7.1%.

4. That the rate of return earned by applicant under existing fares and methods of operation for the year ending December 31st, 1927, was approximately 4.9%.

5. The record shows that the operating methods of the Company might be so changed as to result in large reductions in the cost of operation and still enable the Company to render efficient and adequate service. The management of the Company has made no effort to take advantage of these possible economies which, if made effective, would result in the Company receiving a full and adequate return on the rate base heretofore named, to-wit: the sum of Forty-two million Dollars ($42,000,000). By reason of these facts, the rates of fare now charged by said Company are not unreasonable.

6. That the schedule of fares applied for by applicant, to-wit: a seven (7) cent cash fare with four (4) single fare tokens for twenty-five (25) cents, may be reasonably expected to produce a gross revenue of approximately Fifteen million seven hundred and eight thousand Dollars ($15,708,000), and will, if permitted, produce a net annual return of 9.4 per cent upon the above rate base and the rates applied for, therefore, if put into effect, would be unjust and unreasonable.

Based upon these findings of fact, the following form of order is recommended:

[fol. 164] Order

The Los Angeles Railway Corporation, having filed the above entitled application for an adjustment of its rates, public hearings having been held, and the matter having been submitted to the Commission for its consideration and the Commission having fully considered the premises,

It is hereby ordered that the application of the Los Angeles Railway Corporation for increase of its rates of fare in the above entitled proceeding be and the same hereby is denied.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of March, 1928.

Leon O. Whitsell, Ezra W. Decoto, Thos. S. Louttit, Commissioners.

Certified as a true copy. Fred N. Bigelow, Secretary Railroad Commission, State of California. (Seal.)

I concur in the order and in most of what is said in the opinion which precedes it. There are, however, some things not expressed in the opinion to which reference may well be made and some conclusions which justify further comment.

While I am in accord with what is found as to rate base, there is one consideration not mentioned in the opinion, and which I think should be alluded to, which weighs heavily against acceptance of some of the higher figures claimed by the applicant and lends strong support to the figure found as reasonable. This is that the Company is now, and for many years has been, engaged in active and acute competition with privately owned automobiles. That this fact bears upon and affects the value of its property seems to me so obvious as to require no discussion. Various other reasons could well be advanced to sustain the conclusion respecting value, which finds unusually convincing support in the record.

This is the second time this Company has sought from the Commission authority to depart from the basic 5 cent fare which, with inconsequential exceptions, has prevailed on its Los Angeles system for many years, and to enter upon the uncharted sea of multi-coin fares.(1)

[fol. 165] In November, 1918, the Company came before the Commission with a request that its service and financial conditions be investigated. This finally resulted, on May 31, 1921, in an order permitting the Company to charge a 6 cent fare, with 10 tokens or tickets for 50 cents. (Re Los Angeles Railway Corporation, 19 C. R. C. 980.) In that decision it was pointed out that an investigation by the Commission had been made as to the methods of operation of the applicant and that pursuant to recommendations made by the Commission's engineers various improvements in service had been put into effect, resulting in large economies in operation, but that while the estimate of savings in operating expenses proved to be approximately correct, "unexpected increases in power costs and the further wage increases incurred, amounting to approximately $1,250,000

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(1) Mr. Mott, Chief Engineer of the Commission spent about six weeks in other sections of the country studying street railway conditions. Testifying here, after pointing out the confusion flowing from multi-coin fares and basing his testimony upon his extensive study and investigation, he added:

"Another feature that has impressed itself on me is that in most cities that have departed from the single coin fare of 5 cents, subsequent revenues have continuously diminished to such a degree that results of operation ultimately have often been nearly as unsatisfactory on the higher fares as they were on the 5 cent fare. It may be that there is no logical stopping point between the 5 cent fare and the 10 cent fare."

Later in his testimony, after referring to the experience of the Key System Transit Company in securing a much smaller increase in revenue than expected from an increase in fare from 6 cents to 7 cents, he stated:

"With that situation in mind, together with the fact that in most of the Eastern cities where they have these multiple coin fares. I find the sad tale from a financial point of view that the operators have to tell is—was comparable to the Key Route tale and so much worse than the situation on the two large 5-cent fare cities here in California that I could not help but come to the conclusion that there must be some inherent merit in the basic 5-cent fare."

This testimony throws grave doubt upon the permanency of any increase in revenue due to horizontal increases in fare and as to the beneficial effect of any such increase upon the financial status of a street railway company.

per year, practically absorbed the benefits of operating savings and a part of the net earnings from increased traffic." (19 C. R. C. 998.)

In the course of its opinion the Commission said:

"If adequate street railway service is to be given in Los Angeles, there appears to be no possibility for the company to secure the necessary revenue under a continuation of the flat 5-cent fare. An increase in the fare in some form, we are satisfied, should be authorized if street railway service is not to suffer and great injury is not to result to the development of the city."

The Company did not accept the increased fares authorized by this decision and after a period of over five years and on October 25, 1926, at the instance of the Company, the Commission set aside and revoked its decision.

Notwithstanding this confident prediction the Company, during the seven-year period from 1921 to 1927, inclusive, did, under the basic 5 cent fare and although burdened by its bus operations to which reference will be made, realize net earnings which produced an average return upon all of its property, valued on the basis herein found to be reasonable, of 6.6 per cent. This return was not uniform over the period, it having been subject to somewhat striking fluctuations from year to year, as more fully appears from the following table, which shows the return not only for the seven-year period but for the period from 1913 to date.

Return by Years

Year	Approximate value on basis of value found for 1927	Net income adjusted for 5% sinking fund depreciation	Per cent return
1913	$22,700,000	$1,830,000	8.1
1914	23,700,000	1,680,000	7.1
1915	24,500,000	1,290,000	5.3
1916	25,200,000	1,280,000	5.1
1917	25,500,000	1,190,000	4.7
1918	25,800,000	730,000	2.8
1919	26,100,000	860,000	3.3
1920	27,000,000	1,600,000	5.9
1921	28,500,000	1,770,000	6.2

[fol. 166]

Year	Approximate value on basis of value found for 1927	Net income adjusted for 5% sinking fund depreciation	Per cent return
1922	31,400,000	3,040,000	9.7
1923	34,800,000	3,280,000	9.4
1924	38,800,000	2,880,000	7.4
1925	39,900,000	2,090,000	5.2
1926	41,200,000	1,910,000	4.6
1927*	42,000,000	2,070,000*	4.9
Average for 15-year period			6.0
Average for last seven years			6.6

It should be pointed out that the savings in operating expenses of something like $1,000,000 a year, adverted to by the Commission in its 1921 decision, which were effected, according to the decision, largely in the year 1920, were savings which in large part could have been effected in the years preceding. If this circumstance is taken into account it is apparent that over the 15-year period a 5 cent fare was sufficient to yield the Company a return substantially more than the average of 6.0 per cent indicated in the table.

The experience of the Company over this fifteen-year period, during which there occurred violent changes in conditions, particularly as to operating costs, as well as the error into which the Commission was led in its 1921 decision, emphasizes the danger of attempting to arrive at a satisfactory conclusion as to rates upon the experience of a period as short as one or two years.

Thus it would have been just as reasonable in 1923 to have reduced the fares of the Company, because in that and the preceding year it was earning a return of between 9 and 10 per cent on its property, as it would be now to increase its rates because it is earning a return of only approximately 5 per cent.

Not only can it not be said, with any confidence of realization, that the present rates will not in the future on the average and under normal conditions yield this Company a reasonable return upon the property used in the public

*1927 operations are in part based upon estimates.

service, but a far more logical deduction from the Company's experience is that the existing rates will be adequate to this end. From the table showing earnings it will be observed that good and bad years for the Company occur in rather short cycles. The years 1913 and 1914 and then 1922 and 1923 were very good years. The years 1918 and then 1926 were bad years. Other years were slightly above or below the average. The Company's worst year in the last cycle occurred in 1926. The year 1927 shows signs of improvement. There is no convincing evidence that the present low cycle of earnings is permanent or that in the future the Company will not realize as good or a better return on the average than it has during the last seven years.

One condition brought out by the record of the hearings calls for brief reference. Within the last few years the Company has entered upon the motor bus business (2). This venture thus far has not proved a successful one but, on the contrary, has resulted in an out-of-pocket loss to the Company. As time goes on and the Company becomes more [fol. 167] experienced in this line of business it should be able to reduce these losses and possibly make its motor busses which are operating on a 10 cent fare care for themselves without burdening the rail lines. If not, the rates for this motor bus service should be increased rather than burden the rail lines with such an unprofitable operation. In this connection it should be pointed out that the table of earnings heretofore set out indicates the return on both rail and bus operations. The return on rail operations alone was appreciably higher than on the consolidated business (3).

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(2) These operations really fall within two classes. Some bus service represents merely extensions of strictly rail operations and should be and here are considered as a part of the rail operations. As to these bus lines the rail fares prevail. The other class of bus operations partake more of the nature of independent lines and are operated on a 10 cent fare basis. It is this latter class which is here referred to.

(3) Elimination of bus operation shows an average return to the Company on its rail operations alone during the period 1921-1927, inclusive, of approximately 7 per cent, as more fully appears from the following table,

In considering the reasonableness of the present rate structure of the applicant it must be borne in mind that the value of money invested in utility enterprises is now the lowest it has been in years. Even the most cursory examination of the reported decisions and orders of this Commission shows that capital is flowing readily to sound and needed utilities serving growing communities on an earning basis to the investor of from 6 per cent to 6½ per cent on preferred stocks, while for bonds the range is from 5 per cent, and even less, to 5¾ per cent (4).

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in which has been eliminated the investment in bus property as well as receipts and expenses of bus operations:

Return by Years on Rail Operations

Year	Approximate value rail property on basis found for 1927	Net income on rails, 5% sinking fund for dep.	Per cent return on rails
1921	$28,500,000	$1,770,000	6.2
1922	31,400,000	3,040,000	9.7
1923	34,230,000	3,313,000	9.7
1924	37,840,000	2,952,000	7.8
1925	38,610,000	2,187,000	5.7
1926	39,420,000	2,064,000	5.2
1927	40,110,000	2,206,000	5.5
Average for Period			7.0

This table eliminates all bus operations both on the 10 cent fare basis and on a 5 cent fare basis. In drawing conclusions from this table some allowance must be made for the fact that extension bus lines should be included in the rail operations, which inclusion would reduce slightly the average return shown.

(4) Re The California Oregon Power Company, Decision 18962, dated October 25, 1927—App. 14113.
Re Coast Counties Gas & Electric Company, Decision 19121, dated December 15, 1927—App. 14209.
Re Pacific Gas & Electric Company, Decision 18815, dated Sept. 19, 1927—App. 14072, and Decision 19304, Feb. 3, 1928—App. 14387.
Re Pacific Water Company, Decision 18612, dated July 19, 1927—App. 13799.
Re Southern California Edison Co., Decision 18787, dated Sept. 13, 1927—App. 14044.
Re Southern California Edison Co., Decision 18082, dated March 19, 1927—App. 13602 (29 C. R. C. 463).
Re Southern California Edison Co., Decision 18807, dated July 13, 1927—App. 13907, and Decision 19052, dated November 21, 1927—App. 14187.
Re Southern California Gas Co., Decision 18008, dated Feb. 16, 1927—App. 13496. (29 C. R. C. 386.)
Re Southern California Gas Co., Decision 18918, dated October 10, 1927—App. 13898.
Re Southern Counties Gas Company of California, Decision 19301, dated Jan. 31, 1928—App. 14358.
Re Spring Valley Water Co., Decision 19126, dated Dec. 19, 1927—App. 14204.

This Company occupies the streets under franchises, most of which call for a 5 cent fare. While such fare provisions are subject to change by the State in the exercise of its police power, (*) agreements of this character should not be brushed aside or ignored in the absence of clear and convincing evidence that adherence to them will work grave injustice to the Company. Particularly is this so in view of the many peculiar advantages of the basic 5 cent street car [fol. 168] fare as contrasted with serious objections both in respect to service and financial results that seem to be attendant upon a multi-coin fare structure.

It is to be regretted that here the applicant does not secure each year a uniform return say of 7 per cent, but it does not seem possible to authorize rate changes up or down with such frequency as to bring about such a result. Such frequent changes, even if practicable, would be bound to have injurious consequences to the utility and to the community it serves. After all, if the processes of regulation are so shaped that a utility on the average, and under normal conditions and with proper operating economy and efficiency, earns a reasonable return on the fair value of its property the utility has no cause for complaint.

As it is not established here by clear and convincing evidence nor by a fair preponderance of the evidence and it cannot be found that the present fares will not, in the future, measure up to this test, it results that the present application should be denied.

W. J. Carr, Commissioner.

Certified as a true copy. Fred N. Bigelow, Asst. Secretary Railroad Commission, State of California. (Seal.)

I concur in the opinion and order and in the concurring opinion of Commissioner Carr. There is one matter, that of economies of operations, which, although referred to in the main opinion, to my mind demands more specific attention. Substantial affirmative testimony is found in this record to the effect that changes in operative methods could be made which would save several hundred thousand dollars

(*) This broad statement may be subject to some exceptions due to the 1915 amendment of the Broughton Act. (Statutes 1915, page 1300.)

in expense without interfering with the adequacy, efficiency and safety of operations. The methods proposed are such as have been used successfully in other cities in this state and in cities of other states. For some reason this Company determined to oppose the recommendations. It introduced some rather indifferent testimony, through its own experts, in rebuttal. Realizing, probably, the weakness of its position in the record the Company then proceeded by public and private means, directly and indirectly, to bring about conditions which would influence this Commission to grant its request for increased rates. Under the circumstances, as evidenced by this record, if the Commission were to grant any increase there would fall upon those who are forced to use this street railway an unwarranted and unjust burden.

C. L. Seavey, Commissioner.

Certified as a true copy. Fred N. Bigelow, Asst. Secretary Railroad Commission, State of California. (Seal.)

[fol. 169] EXHIBIT "E" TO COMPLAINT

Application for Rehearing

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Application No. 13323

In the Matter of the Application of LOS ANGELES RAILWAY Corporation, a Corporation, for an Order Readjusting Rates and Establishing Just and Reasonable Rates for the Transportation of Persons on the Company's Lines in the State of California

Application for Rehearing

To the Honorable the Railroad Commission of the State of California:

Los Angeles Railway Corporation, a corporation, applicant in the above entitled matter, hereby respectfully petitions the Commission for a rehearing on Decision and Order

No. 19521. As grounds for said rehearing, applicant alleges:

I

Said Decision and Order is unconstitutional, void and unlawful, in that:

(a) Said decision and Order is in violation of the Constitution of the United States and the Constitution of the State of California in that it deprives applicant of its property without due process of law, denies applicant the equal protection of the law, and takes applicant's property for public use without just compensation.

(b) Said Decision and Order is arbitrary, is contrary to the evidence and is wholly without support in the record.

(c) Said Decision and Order deprives applicant of a fair return upon the fair value of its property used and useful in the public service.

(d) Said Decision and Order fails to find and establish the fair value of applicant's property used and useful in the public service.

(e) Said Decision and Order fails to allow for necessary and reasonable operating expenses for the services now given and necessary to be given by applicant.

(f) Said Decision and Order fails to authorize applicant to put into effect and collect the rates and charges set forth in its application filed November 17, 1926.

(g) Said Decision and Order fails to establish and authorize to be charged and collected any fair and reasonable rates which will enable applicant to earn the cost of the service, consisting of adequate and reasonable operating expenses, including depreciation and taxes, and a fair return upon the fair market value of its property used and useful in the public service.

[fol. 170] II

Specifically, applicant alleges that said Decision and Order No. 19521 is unconstitutional, void and unlawful for each and every of the following reasons:

(1) The present basic five cent fare now being charged and collected by applicant generally within the City of Los Angeles, which rate of fare the Commission finds to be reasonable, is in fact non-compensatory, unjust, unreasonable and confiscatory in that said five cent fare has not yielded for a number of years past, is not now yielding, and cannot in the future yield a reasonable and fair return upon the fair value of applicant's property devoted to the service of the public.

(2) The following finding of fact in said Decision and Order, to-wit:

"That a reasonable rate base to be used for the purpose of computing a fair return upon the operative property of this company is the sum of Forty-two Million Dollars ($42,000,000)."

and the further statement by the Commission preceding said finding of fact, to-wit:

"The determination of fair value for rate making purposes calls for the exercise of judgment and, in reaching the conclusion hereinafter stated, all factors having a bearing upon the value of the property involved have been considered and such weight has been given to each as seems proper under the evidence of record. Forty-two million Dollars ($42,000,000) is the highest figure that may reasonably be accepted as a rate base. This figure covers fully the undepreciated cost of the Company's property with land at present day values. A considerable portion of the Company's property was acquired or constructed during the period of high prices and allowance is made for such cost. It includes property constructed by funds set aside in the depreciation reserve. Furthermore, there must be taken into consideration the unsatisfactory franchise condition of the company discussed in In re Los Angeles Railway Corporation (19 C. R. C. 980), as to which there is no evidence of any improvement. These facts make the acceptance of any higher estimate of a rate base, than that herein adopted, unjustified. The figure of Forty-two Million Dollars ($42,000,000) includes an allowance for materials and supplies of approximately Seven Hundred and Fifty Thousand Dollars ($750,000), and for work in

progress of approximately Two Hundred and Fifty Thousand Dollars ($250,000)."

are not supported by the evidence and are contrary to the evidence, in that the evidence shows that the present fair value of applicant's property used and useful in the service of the public is in excess of Forty-two Million Dollars ($42,000,000), and the Commission erred as a matter of law in fixing the historical reproduction cost of applicant's operative property as the full present fair value and as the full rate base, without allowing for any other existing elements of value, as proven in the record by undisputed evidence.

The Commission's finding quoted above that there must be taken into consideration the unsatisfactory franchise condition of the company discussed in In re Los Angeles Rail-
[fol. 171] way Corporation (19 C. R. C. 980), as to which the Commission says there is no evidence of any improvement, is not supported by the evidence and is contrary to the evidence, in that the uncontradicted evidence shows that applicant's franchise situation has been substantially improved since the Commission's Decision No. 9029 in the proceeding referred to above.

(3) The following finding of fact in said Decision and Order, to-wit:

"That the financial results from the operation of applicant's property, under present operating methods, for the year 1927, based upon estimates contained in the record, may be fairly stated as follows:

Total Operating Revenues	$13,254,000
Total Operating Expense, including depreciation, computed on a 5% sinking fund basis and taxes	11,183,739
Net income available for return	2,070,261"

is not supported by the evidence and is contrary to the evidence, in that the uncontradicted evidence shows that after allowing normal and reasonable operating expenses, including a reasonable and proper allowance for depreciation and taxes, the net income of applicant available for return for the year 1927 is not more than $1,000,000.

(4) The following finding of fact in said Decision and Order, to-wit:

"That the average annual rate of return earned by applicant for the five-year period ending December 31, 1926, has been approximately 7.1%,"

is not supported by the evidence and is contrary to the evidence, in that the uncontradicted evidence shows that the net income available for return, after actual operating expenses for the five year period ending December 31, 1926, and computed on annual rate bases not including any allowance whatever for working capital, going value, or development cost, and without reasonable or adequate allowance for overhead expenses, was less than 5.8% on such inadequate valuation and on such unreasonable and unlawful value;

(5) The following finding of fact in said Decision and Order, to-wit:

"That the rate of return earned by applicant under existing fares and methods of operation for the year ending December 31st, 1927, was approximately 4.9%,"

is not supported by the evidence and is contrary to the evidence, in that the uncontradicted evidence shows that the net income available for return under existing fares and methods of operation for the year ending December 31, 1927, and calculated on the fair value of applicant's property used and useful in the service of the public is less than 2½% and falls short for the year 1927 of earning a return of 6% on such reasonable, fair value by more than $1,500,000 and falls short of earning a 7% return on such value by more than $2,000,000, and falls short of earning a return of 8% on such value by more than $2,500,000.

In connection with the Commission's finding quoted in this paragraph, and also the finding quoted in subparagraph 4, supra, applicant alleges that its methods and practices, since 1921, of computing depreciation included in operating expenses, is in conformity with the method prescribed by your Honorable Commission in Decision No. 9029, dated May 31, 1921, as follows:

[fol. 172] "The engineers for the city, the company and this Commission together have made a careful estimate of a proper depreciation allowance for this company and there is agreement between them as to the result.

It is our opinion that the company should be required to set aside for this purpose the sum of $720,000 per annum in monthly installments of $60,000, under regulations prescribed by the Commission. This amount will permit the replacement of a total amount of depreciable property proposed to be taken care of in this reserve of $14,958,000 within an average life of approximately fourteen years, assuming that the average interest earnings of the fund are approximately 6%. Allowance for the depreciation item is made by the Commission in the rate fixed." (19 C. R. C. 993.)

The uncontradicted evidence shows that subsequent to the date of the Commission's said Decision No. 9029, applicant's depreciable property has at least doubled in amount.

In this connection and also in connection with the Commission's findings referred to under sub-paragraphs 3 and 4, supra, applicant alleges that the only evidence contained in the record may be summarized as follows, to-wit:

(a) Estimate by Commission's Chief Engineer, A. G. Mott (Exh. 64, p. 2)

Estimated Financial Results of Operation—Year 1927

	Based on H. R. C. 5% sinking fund depreciation	Based on H. R. C. C. L. D. straight-line depreciation	Based on R. C. N. L. D. straight-line depreciation
Operating Revenue.....	$13,254,000	$13,254,000	$13,254,000
Operating Expense:			
Expense	9,368,533	9,368,533	9,368,533
Depreciation	979,209	1,556,917	2,013,091
Total Expense.....	$10,347,742	$10,925,450	$11,381,624
Net Operating Revenue..	2,906,258	2,328,550	1,872,376
Taxes	835,997	835,997	835,997
Rent	.....	.....	.....
Operating Income.....	2,070,261	1,492,553	1,036,379
Basis for computing return	41,914,052	31,112,871	37,341,571
Return	4.9%	4.8%	2.8%
Increase in gross Revenue necessary to net a			
6% return	715,840	502,820	1,414,982
7% return	1,227,245	882,437	1,870,596
8% return	1,738,650	1,262,052	2,326,211

[fol. 173] Explanatory Note

Column 1.—Statement of the results of operation and rate of return, using a historical reproduction cost undepreciated for a rate base, and a 5% sinking fund annuity for depreciation, calculated on the historical reproduction cost.

Column 2.—Statement of results of operation and rate return using the historical reproduction cost depreciated as a rate base and a straight line annuity for depreciation calculated upon the historical reproduction cost.

Column 3.—Statement of results of operation and rate of return using the reproduction cost new depreciated as a rate base and a straight line annuity for depreciation calculated upon the reproduction cost new.

(b) Estimate by Applicant (Exh. 42, p. 2)

Item	Historical reproduction cost	Reproduction cost new, less depreciation		Reproduction cost new, 70% condition
		Straight line method	Sinking fund method	
Valuation of Operative Property as of Dec. 31, 1926	$49,303,786	45,281,253	51,824,868	43,677,518
Fair Return:				
At rate of 8%	3,944,303	3,622,500	4,145,989	3,494,201
At rate of 7%	3,451,265	3,169,688	3,627,741	3,057,426
Actual Return for 1926	1,281,598	1,281,598	1,281,598	1,281,598
Estimated Return for 1927	691,882	691,882	691,882	691,882
Deficit below Fair Return at 8%—1926	2,662,705	2,340,902	2,864,391	2,212,603
Deficit below Fair Return at 8%—1927	3,252,421	2,930,618	3,454,107	2,802,319
Rate of return on valuation produced by actual return—1926	2.6%	2.8%	2.5%	2.9%
Rate of return on valuation produced by estimated return—1927	1.4%	1.5%	1.3%	1.6%

NOTE.—If the overheads used in the applicant's totals are undepreciated, it will increase the valuation as of December 31, 1926, as follows:

Historical Reproduction Cost Less Depreciation	$1,285,010
Reproduction Cost New Less Depreciation	2,265,753

(a) Estimate by Commission's Chief Engineer, A. G. Mott (Exh. 64, p. 2)

This estimate is not in detail and is contained in City Exhibit No. 53, pages 31 to 34, as follows:

[fol. 174] "Amount of Return

On a Rate Base of $31,000,000 a return of 7% would be $2,170,000 per annum, which is the measure of the gross income which should be available for return on the investment under the conclusions hereinbefore arrived at."

and further, on pages 33 and 34 of said Exhibit No. 53:

"The gross income of the company available for return on the investment for the year 1926 was $1,283,598, or $886,402 less than the amount required as above computed, * * * it will be necessary to increase gross revenues in excess of $1,000,000 in order to produce the $886,402 additional income required."

Relative to estimates (a) and (c) above, the record shows conclusively that both of these estimates are based upon unlawful, incomplete, inadequate and erroneous valuations, said valuations excluding and making no allowance whatever for working capital, going value, disputed inventory and valuation items; and including inadequate and insufficient interest during construction, construction work in progress and minimum capital expenditures in the immediate future; and further that the estimates, (a) and (c), above are based on erroneous, insufficient and inadequate allowances for operating expenses, including depreciation.

Applicant further alleges and shows that notwithstanding the unlawful, insufficient, inadequate and erroneous estimates of valuation of operative property and of operating expenses as shown in Estimate (a) above, the record conclusively shows that upon the estimates of the Commission's Chief Engineer, in order to earn a return of 8% upon his estimate of historical reproduction cost, applicant is entitled to an increase in gross revenue of $1,738,650; that in order to earn a return of 8% upon his erroneous and inadequate estimate of reproduction cost new less depreciation, applicant is entitled to an increase in gross revenue of

$2,326,211 based on the operations for the year 1927; and further, that notwithstanding the unlawful, insufficient, inadequate and erroneous estimates of valuation of operative property and of operating expenses made by said Delos F. Wilcox, a witness for the City of Los Angeles, applicant is entitled to an increase in gross revenue "in excess of $1,000,000."

(6) The following finding of fact in said Decision and Order, to-wit:

"The record shows that the operating methods of the company might be so changed as to result in large reductions in the cost of operation and still enable the Company to render efficient and adequate service. The management of the Company has made no effort to take advantage of these possible economies which, if made effective, would result in the Company receiving a full and adequate return on the rate base heretofore named, to-wit: the sum of Forty-two Million Dollars ($42,000,000). By reason of these facts, the rates of fare now charged by said Company are not unreasonable,"

is not supported by the evidence and is contrary to the evidence. There is nothing in the Commission's decision to indicate what changes in operating methods the Commission has reference to in its finding that large reductions in the cost of operation might be made and still enable applicant to render efficient and adequate service or what econo-
[fol. 175] mies the Commission has in mind when it finds that applicant's management has made no effort to take advantage of such possible economies which if made effective would result in applicant receiving a full and adequate return on the rate base found by the Commission. Applicant assumes, however, that this general finding of fact has reference to the plan of 100 per cent one-man car operation proposed at the last hearing in this proceeding by the Commission's chief engineer.

The evidence shows that no such change in operating methods is practicable which will result in a material reduction in the cost of operation and at the same time enable applicant to render efficient and adequate service. The preponderance of this evidence shows that under such traffic conditions as have existed in Los Angeles for the

past four or five years and as now exist, one-man car operation as proposed would inevitably result in unsafe, inefficient, inadequate and unsatisfactory service and prevent applicant's management from rendering the adequate and efficient street railway transportation service needed and desired by the City of Los Angeles and its inhabitants.

The evidence further shows that even assuming the practicability, and regardless of the results, of one-man car operation, a long period of time must necessarily elapse before such type of service could be installed, and that capital expenditures in excess of $1,000,000 would be required to adapt applicant's equipment and operations to such operation.

Applicant further alleges that 100 per cent one-man car operation is unsuited to the needs and requirements of, and not demanded or desired by, the City of Los Angeles and its inhabitants. For these reasons applicant must look upon such proposal as unreasonable and unsound and would consider such operation unsafe, inadequate and insufficient and as mis-management on applicant's part. Applicant admits that it is its duty to provide adequate and safe transportation service at reasonable rates to the City of Los Angeles and its inhabitants, and alleges that the type of car and the method of operating it, required to perform that service, is a matter within the discretion of its management, subject however to the control of the regulatory authorities; that the jurisdiction to order the one-man car operation vests in the City of Los Angeles; that said city, as the record discloses, claims that jurisdiction; that said city not only did not recommend or approve such type of service as suggested by the Chief Engineer of the Commission, but is unalterably opposed to it, as demonstrated by the resolution adopted by its Board of Public Utilities and Transportation and a widespread expression of public opinion.

(7) The following finding of fact in said Decision and Order, to-wit:

"That the schedule of fares applied for by applicant, to-wit: a seven (7) cent cash fare with four (4) single fare tokens for twenty-five (25) cents, may be reasonably expected to produce a gross revenue of approximately Fifteen Million Seven Hundred and Eight Thousand Dollars

($15,708,000) and will, if permitted produce a net annual return of 9.4 per cent upon the above rate base and the rates applied for, therefore, if put into effect, would be unjust and unreasonable."

is not supported by the evidence and is contrary to the evidence, in that the preponderance of the evidence shows that the rates of fare applied for by applicant, if put into [fol. 176] effect, will not be unjust and unreasonable, and will not produce a net annual return of 9.4% upon the present fair value of the applicant's property used and useful in the public service, but on the contrary will be just and reasonable and will produce a net annual return of less than 8% upon the present fair value of applicant's property used and useful in the public service.

III

Said Decision and Order is also erroneous, void and unlawful in that,

(1) It fails and neglects to find the reproduction cost new of the properties of applicant devoted to the service of the public;

(2) It fails and neglects to find the reproduction cost new less depreciation of the properties of applicant devoted to the service of the public;

(3) It fails and neglects to find the present fair value, for rate making purposes, of the property of applicant used and useful in the service of the public.

(4) It fails and neglects to make any finding or decision on the so-called disputed valuation items that were referred for decision to the Railroad Commission because agreement could not be reached by the Commission's Engineering Department, the Engineering Department of the Board of Public Utilities and Transportation of the City of Los Angeles and applicant, the three parties making the 1923 joint valuation under the Commission's authority and direction, said disputed items amounting in the valuation as of the date of March 31, 1923, approximately to $2,600,000 in the estimate of reproduction cost new less depreciation. Such disputed items for which no allowance whatever has been made in the Commission's Decision and Order consist

principally of the value of rights retained by applicant in private rights of way partially dedicated to public streets; additional reasonable allowance for interest during construction based on a reasonable construction period; and the minor disputed item of oiling of right of way.

(5) It fails and neglects to find what would constitute a reasonable rate of return upon applicant's property used and useful in the service of the public;

(6) It fails and neglects to find the amount of additional net revenue necessary to constitute a fair return to applicant on its property used and useful in the service of the public;

(7) Notwithstanding the Commission's finding in its Decision and Order No. 18531 of June 20, 1927, that

"as to the damage that applicant reports it has suffered during the past two years and which it says it will suffer during the present year, that is dependent upon what is a proper rate base, a proper rate of return, a proper allowance for operating expenses and depreciation. In other words, a determination of the extent to which applicant has been damaged, if at all, requires a determination of the major issues in this proceeding,"

and notwithstanding that upon said finding applicant's application for emergency interim rates was denied, the Commission has failed, refused and neglected to make "a determination of the major issues in this proceeding" and has failed, refused and neglected to find or establish any [fol. 177] complete basis upon which to determine fair and reasonable rates, such complete basis necessarily consisting of a determination of

(a) the fair value of the property used and useful in the public service;

(b) the total operating revenues reasonably to be expected;

(c) the reasonable and normal operating expenses including depreciation and taxes and

(d) a fair rate of return upon the fair value of applicant's operative property.

IV

Said Decision and Order is also erroneous, void and unlawful, and the Railroad Commission has not regularly pursued its authority,

(1) Because of the exclusion by the Commission of many values and elements of value which, properly and lawfully should be taken into consideration in fixing and determining the fair value of the property of applicant used and useful in the service of the public, specific reference being made to the exclusion of working capital, going concern value, and development cost.

(2) In not making a proper allowance for engineering, law, injuries and damages, taxes, miscellaneous, interest during construction, franchises, and for a reasonable minimum of capital expenditures required in the immediate future.

V

By reason of the insufficient revenue produced by the rates and fares now in effect and by reason of the failure and refusal of the Railroad Commission to authorize applicant to charge and collect reasonable rates and fares and the rates and fares requested in applicant's application herein, applicant is now and has been for some time past unable to finance itself and to borrow the necessary money for extensions and improvements and for necessary capital expenditures; and for the same reason applicant is not now earning sufficient net income available for return to meet the interest payments on its funded and unfunded debt, notwithstanding the fact that the rate of interest on such debt averages at the unusually low interest rate of approximately 5½% per annum.

VI

That with such a showing of past, present and prospective earnings and with the continuing confiscation of its property by reason of the failure and refusal of the Railroad Commission to fix and authorize the collection of fair and reasonable rates applicant finds it impossible to finance urgent capital expenditures from the proceeds of unsecured loans and that its credit is being permanently and irrevocably jeopardized and impaired. That as a consequence of such impairment of credit and inability to fi-

nance it will be impossible for applicant to continue the betterments and extensions of its property and its service that applicant is willing and anxious to make and that such a condition will work a serious and irreparable injury not only to applicant but also to the patrons it serves, to the City of Los Angeles and the other communities served by its lines.

VII

On July 22, 1924, applicant filed with your Honorable Commission its Application No. 10303 for an order authorizing a reorganization of applicant's corporate and financial structure to the end that it might be put in a better [fol. 178] position to re-finance or permanently to finance itself in order to meet its own and the growing city's urgent needs for increased and adequate transportation facilities.

Said Application No. 10303 has been pending since July 22, 1924, and is now pending before the Railroad Commission, and that this applicant is informed and believes that said application cannot be granted by your Commission by reason of the insufficiency of applicant's earnings under existing rates to justify or permit a reorganization of its present financial structure and the issuance of new and additional securities, and that such urgent re-financing cannot be accomplished until applicant's earning condition improves, and that such earning conditions cannot possibly improve until applicant's rates are increased as prayed for in the present proceeding, and increased to a point where applicant is permitted to earn a fair and reasonable return on the fair and reasonable value of its operative property.

Applicant, therefore, finds itself in this serious and intolerable position:

(1)

It is unable to go forward with the urgently required capital expenditures for improved and extended service, because of its inability to issue, without the permission of your Honorable Commission, the necessary securities;

(2)

It cannot receive the Commission's permission for the issuance of such required securities until it can show to the Commission sufficient and adequate earnings;

(3)

It cannot show such sufficient and adequate earnings until the Commission authorizes rates which will produce a fair return on the fair value of its operative property;

(4)

And until such rates are authorized by the Commission, applicant is suffering a steadily increasing loss and confiscation of its property amounting at a minimum to $2,200,000 in the present year 1928, and to a minimum of $2,000,000 for each of the years 1927 and 1926.

VIII

In its desire to have full consideration given by the Commission to all issues in this proceeding whether referred to in the Commission's main opinion or in the two concurring opinions, applicant further respectfully shows:

(1) The following statement and finding in the concurring opinion of Commissioner Carr, to-wit:

"While I am in accord with what is found as to rate base, there is one consideration not mentioned in the opinion, and which I think should be alluded to, which weighs heavily against acceptance of some of the higher figures claimed by the applicant and lends strong support to the figure found as reasonable. This is that the Company is now and for many years has been engaged in active and acute competition with privately owned automobiles. That this fact bears upon and affects the value of its property seems to me so obvious as to require no discussion."

[fol. 179] is not supported by the evidence and is contrary to fact; the evidence conclusively shows that the fair value of applicant's property used and useful in the service of the public is not in any degree whatsoever affected or influenced by the competition of privately owned automobiles. In this connection applicant alleges that the alleged competition of privately owned automobiles has no bearing whatsoever and cannot affect in any degree the finding of the fair value of applicant's property in a rate proceeding; and applicant further alleges in this behalf that any in-

crease or any decrease by Commission of such fair value by reason of the competition of privately owned automobiles is unlawful, erroneous, unreasonable and contrary to fact.

(2) The following statement and finding in said concurring opinion, to-wit:

"Notwithstanding this confident prediction the Company during the seven-year period from 1921 to 1927, inclusive, did, under the basic 5 cent fare, and although burdened by its bus operations to which reference will be made, realize net earnings which produced an average return upon all of its property, valued on the basis herein found to be reasonable, of 6.6 per cent. This return was not uniform over the period, it having been subject to somewhat striking fluctuations from year to year, as more fully appears from the following table, which shows the return not only for the seven-year period but for the period from 1913 to date.

Return by Years

Year	Approximate value on basis of value found for 1927	Net income adjusted for 5% sinking fund depreciation	Per cent return
1913	$22,700,000	$1,830,000	8.1
1914	23,700,000	1,680,000	7.1
1915	24,500,000	1,290,000	5.3
1916	25,200,000	1,280,000	5.1
1917	25,500,000	1,190,000	4.7
1918	25,800,000	730,000	2.8
1919	26,100,000	860,000	3.3
1920	27,000,000	1,600,000	5.9
1921	28,500,000	1,770,000	6.2
1922	31,400,000	3,040,000	9.7
1923	34,800,000	3,280,000	9.4
1924	38,800,000	2,880,000	7.4
1925	39,900,000	2,090,000	5.2
1926	41,200,000	1,910,000	4.6
1927*	42,000,000	2,070,000	4.9
Average for 15-year period			6.0
Average for last seven years			6.6

*1927 operations are in part based on estimates."

[fol. 180] is not supported by the evidence and is contrary to the evidence and is contrary to fact. In this connection applicant alleges that the "Return by Years" tabulation above quoted and the Commission's conclusions drawn therefrom are erroneous and contrary to fact and not in accordance with the actual operating results of applicant for the 15 years referred to, and that the figures showing the "Per Cent Return" are computed by basing same upon unlawful, incomplete, inadequate and erroneous valuation figures, and upon insufficient and erroneous estimates of operating expenses for each one of the 15 years referred to in said table. Applicant further alleges, and the record shows, that the correct and actual operating figures for each of the years referred to were filed each year by applicant with the Commission in accordance with law and are now on file in the Commission's office, and that based on reasonable valuation estimates applicant at no time during said 15 year period earned a fair return upon the fair value of its operative property.

(3) The following statement and finding in said concurring opinion, to-wit:

"This is the second time this Company has sought from the Commission authority to depart from the basic 5 cent fare which, with inconsequential exceptions, has prevailed on its Los Angeles system for many years, and to enter upon the uncharted sea of multi-coin fares."

and further, to-wit:

"The Company did not accept the increased fares authorized by this decision and after a period of over five years and on October 25, 1926, at the instance of the Company, the Commission set aside and revoked its decision,"

is not supported by the evidence and is contrary to the evidence. In this connection applicant alleges that the evidence conclusively shows that in 1927 there were upwards of 140 cities in the United States, with a population each of over 25,000, charging and collecting a so-called multiple coin fare and that as long as 10 years ago the so-called multiple coin fare was charged and collected in at least 50 cities in the United States. Applicant further alleges, and

the record conclusively shows, that in 1927 there were more than 200 cities of over 25,000 population in the United States and Canada where under the orders and authority of regulating commissions and of courts it had become necessary to depart from the basic 5 cent fare, and that in view of the wide and long continued and steadily increasing experience with other than single coin fares in all parts of the United States and Canada and elsewhere it is contrary to fact and erroneous to assume or to assert that the collection of a fare greater or other than 5 cents is an embarkation upon "the uncharted sea of multi-coin fares."

Applicant further alleges and the evidence conclusively shows that subsequent to the Commission's Decision No. 9029, supra, which decision contained not a mandatory but a permissive order, applicant did not elect to put into effect and collect the increased fares authorized, for the reason that the principal owner of applicant's property, H. E. Huntington, decided to continue with the operation of the existing 5 cent fare, notwithstanding the annual large losses and notwithstanding the fact that the 5 cent fare did not and could not produce a fair return upon the fair value of applicant's property.

[fol. 181] Applicant further alleges in this behalf that the evidence conclusively substantiates these facts and conclusively shows that applicant's indebtedness to H. E. Huntington and Huntington interests, as evidenced by unsecured loans and by unpaid interest on funded and unfunded debt amounts to more than $8,000,000. This total, the evidence also shows, represents part of the accumulated deficit over a long period of years by reason of applicant's inability and failure to earn a fair return.

In this connection applicant represents and alleges, and the record shows, that notwithstanding such large accumulated deficit, applicant has not sought, and does not now seek, any return that would enable it to make good all or part of such past losses, but it has lawfully sought, and now seeks, just and reasonable rates that will permit the earning of a fair return now and in the future upon the fair value of its property used and useful in the public service and a return that will bring to an end the long continued confiscation of its property.

(4) The following statements and findings in said concurring opinion, to-wit:

"It is to be regretted that here the applicant does not secure each year a uniform return say of 7 per cent, but it does not seem possible to authorize rate changes up or down with such frequency as to bring about such a result. Such frequent changes, even if practicable, would be bound to have injurious consequences to the utility and to the community it serves. After all, if the processes of regulation are so shaped that a utility on the average, and under normal conditions and with proper operating economy and efficiency, earns a reasonable return on the fair value of its property the utility has no cause for complaint,"

are not supported by the evidence and are contrary to the evidence. In this connection applicant alleges, and the evidence conclusively shows, that the public interest, convenience and necessity require and the constitutional rights of applicant demand that the Railroad Commission authorize rates which will enable applicant to earn the cost of service, including a fair return on the fair value of its property now used and useful in the public service. The evidence further conclusively shows that the fixing of such just and reasonable rates cannot and will not have injurious consequences either to the utility or to the community it serves.

IX

Applicant regrets the necessity, which its self-respect demands, of denying all of the assertions contained in the concurring opinion of Commissioner Seavey concerning one-man car operation and the evidence in regard to it. The evidence in the record on that subject is not only not substantial but is decidedly negative.

The record in the proceeding shows indisputably that, under normal conditions and with proper operating economy and efficiency, applicant has not been, in the past, is not now, and will not in the future be, able at the present rates to earn a reasonable return on the fair value of its property devoted to public service.

Wherefore, applicant respectfully prays that the Commission set aside said Decision and Order; that a rehear-

ing be granted in the above entitled matter, and that upon such rehearing said Decision and Order No. 19521 be [fol. 182] amended to meet the requirements and objections above specified so as to authorize applicant to charge the rates and fares specified in its application filed with the Commission November 17, 1926, and that pending the final determination of this application for rehearing said Decision and Order be suspended and stayed; and that applicant have such further and other relief as may be meet and proper.

Dated Los Angeles, April 13th, 1928.

Respectfully submitted.

Los Angeles Railway Corporation, by Gibson, Dunn & Crutcher, S. M. Haskins, Its Attorneys. Woodward M. Taylor, of Counsel.

STATE OF CALIFORNIA,
City and County of Los Angeles, ss:

George J. Kuhrts, being first duly sworn, deposes and says:

That he is an officer, to-wit, the President and General Manager of Los Angeles Railway Corporation, a corporation, the applicant named in the foregoing application for rehearing; that he has read said application for rehearing and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters that he believes it to be true.

George J. Kuhrts.

Subscribed and sworn to before me this 13th day of April, 1928. Mary S. Alexander, Notary Public in and for the City and County of Los Angeles, State of California. My commission expires July 10, 1928.

[fol. 183] EXHIBIT "F" TO COMPLAINT

Decision and Order No. 19657

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Decision No. 19657

In the Matter of the Application of LOS ANGELES RAILWAY CORPORATION, a Corporation, for an Order Readjusting Rates and Establishing Just and Reasonable Rates for the Transportation of Persons on the Company's Lines in the State of California

Application No. 13323

Order Denying Rehearing

By the COMMISSION:

Petition for a rehearing of our Decision No. 19,521 herein was filed by applicant, Los Angeles Railway Corporation, on April 14, 1928. We have carefully considered this petition and each and every allegation thereof, and in our opinion no good cause for the granting of a rehearing is therein stated.

In this connection, we hereby declare that in reaching our conclusion as to a fair rate base figure in this proceeding we took into consideration all of the evidence and claims of value which are before us. Such a rate base figure is of value solely for the purpose of testing the reasonableness of the rates, and in arriving at our finding upon this item we gave particular attention and weight to the estimates of reproduction cost new, less depreciation, and we took into consideration and made what we believe to be fair allowance for claimed intangible elements of value, in the light of all the surrounding circumstances.

It is significant that, on this record, a fair allowance for reproduction cost new, less depreciation, would, with fair allowance for all intangible items, amount to a sum considerably less than the figure which we have found as a rate base. The testimony as to these items discloses wide variation in the several estimates, and in our opinion, not more than $36,350,000 could fairly be said to represent the basic figure of reproduction cost new, less depreciation. We have given what we believe to be a proper weight to this item.

In final analysis, the matter of a rate base and its fixation upon the basis of diverse theories and conflicting testimony is a matter of judgment, and after a careful consideration of the petition for rehearing above mentioned, and a reconsideration of the testimony adduced in this case, we are of the opinion that we must adhere to our former judgment [fol. 184] and finding that the highest rate base which can reasonably be used for the purpose of computing a fair return on the operative property of this corporation is the sum of $42,000,000. In the light of the record before us in this proceeding, we are of the opinion that this finding is a most liberal one, and that it is the highest figure which may properly be used for the purpose of testing the fairness and reasonableness of the fares in force upon applicant's system.

It is therefore ordered that the above mentioned petition for rehearing of Los Angeles Railway Corporation, applicant herein, be and the same is hereby denied.

Dated at San Francisco, California, this 23rd day of April, 1928.

(Signed) Leon O. Whitsell, C. L. Seavey, Ezra W. Decoto, Thos. S. Louttit, W. J. Carr, Commissioners.

Certified as a true copy. H. G. Mathewson, Secretary Railroad Commission, State of California. (Seal.)

[fol. 185] EXHIBIT "G" TO COMPLAINT

Proposed Rates of Fare

C. R. C. No. — cancels C. R. C. No. — and supplements thereto. Only one supplement of this tariff will be in effect at any one time.

Los Angeles Railway Corporation

Local and Joint Passenger Tariff Number —, Cancelling Local Passenger Tariff Number —

Naming Fares Between Points on Lines of Los Angeles Railway Corporation in County of Los Angeles, State of California

Fares and arrangements named in this tariff also apply from and to points on the lines of the Pacific Electric Rail-

way Company and the Los Angeles Motor Coach Company, and via their lines, whose concurrences are filed with the Railroad Commission of the State of California, as follows:

Pacific Electric Railway Company..... P. 2, No. 34
Los Angeles Motor Coach Company..... P. 2, No. 4

Issued —— —, ——. Effective —— —, ——.
Issued by —— ——.

[fol. 186] Page No. 1

Table of Contents

Rules and Regulations..... Page 2
Application of Fares..... Item 1, Page 2
Fares for Children..... Item 2, Page 2
Stopovers..... Item 3, Page 2
Redemption of Tickets..... Item 4, Page 2
Baggage..... Item 5, Page 2
Dogs..... Item 6, Page 2
Special Car Rates..... Item 7, Page 2
School Children's Fares..... Item 8, Page 3
Token Fares..... Item 9, Page 3
Fares on Rail Lines..... Item 10, Page 4
List of Motor Coach Lines..... Item 11, Page 5
Grouping of Motor Coach Lines..... Item 12, Page 6
Fares on Motor Coach Lines and Transfer Privileges Between Them and Rail Lines of Los Angeles Railway..... Item 13, Page 7
Fares and Transfer Privileges Between Motor Coach and Rail Lines of Los Angeles Railway Motor Coach Lines of Los Angeles Motor Coach Company and Local Lines of Pacific Electric Railway.. Item 14, Page 8
Explanation of Abbreviations..... Item 15, Page 8

[fol. 187] Page No. 2

Rules and Regulations Governing this Tariff

Item 1—Application of Fares:

(a) Fares named herein are for continuous passage in either direction and are intermediate in application.

(b) Fares named herein must not be used to make through charge or rate on interstate journey or trip.

Item 2—Fares for Children:

Children under five years of age, when accompanied by parent or guardian, will be carried free of charge; except that not more than two (2) such children will be so carried.

Item 3—Stopovers:

Stopover privileges are not allowed on fares shown in this tariff.

Item 4—Redemption of Tickets:

Unused portion of 40-ride individual school ticket books purchased after May 1 of each year will be exchanged for same number of tickets good for following school year if accompanied by regular school ticket application.

Item 5—Baggage:

Fares named herein do not include the transportation of baggage. Baggage will not be checked and none handled except such hand baggage as can be cared for by passenger without inconvenience to other passengers. Long, bulky or odorously offensive packages, or articles, the nature of which would render the handling thereof a hazard, will not be carried.

Item 6—Dogs:

Dogs will not be carried.

Item 7—Special Car Rates:

(a) Five (5) dollars per hour or fraction thereof when used for the ordinary transportation of passengers.

(b) Special rates for special or unusual purposes, according to the use put.

(c) Time under paragraphs (a) and (b) will be computed from time car leaves carhouse until its return thereto.

(d) Special car service will be rendered only when equipment and crews are available and not required for regular service.

[fol. 188] Page No. 3

Item 8—School Children's Fares:

(a) Books containing forty (40) individual school tickets will be sold for $1.40 to persons under eighteen (18) years of age attending free public schools located both within the city of Los Angeles and within the Inner Zone, provided such person present for each book application therefor on form provided by this corporation, properly filled in, signed by the principal of the school attended, certifying that the person desiring to purchase such ticket is a student of such school, and is under eighteen (18) years of age. Such certificates will be retained by this corporation.

(b) School tickets will be honored for transportation only if book is presented (detached tickets wil not be so honored) by purchaser, and only if purchaser's name appears below contract in book.

(c) School tickets will be honored for transportation within the Inner Zone within the city of Los Angeles only, and only between 7:00 A. M. and 6:00 P. M., but will not be honored on Saturdays, Sundays, and other days when such public schools are not in session.

(d) School tickets will be honored on motor coach lines, Nos. 1, 2, 4 and 5 only.

Item 9—Token Fares:

Metal tokens, similar in shape to coins, good for transportation as herein provided for, will be sold at the rate of four (4) for twenty-five (25) cents. Not less than four (4) tokens will be sold at any one sale.

Item 10—Fares on Rail Lines:

Fares are one-way fares.

Between points in V / And points in>	One-way fare: Inner zone	Second zone	Third zone
Inner Zone....	7 cents or 6¼ cents by token fare.		
Second Zone..	10 cents.....	7 cents or 6¼ cents by token fare.	

Zone boundaries

(a) All points on rail lines, except those in second and third zones.

(a) Points along South Broadway or Moneta Avenue between Manchester Avenue and 112th Street.

(b) Points along Vermont Avenue between Manchester Avenue and 114th Street.

(c) Points along Eagle Rock Avenue and Colorado Boulevard between the intersection of Avenue 45 and Eagle Rock Avenue, and intersection of Colorado Boulevard and Townsend Street.

Page 4—Continued

Between points in V	And points in >	One-way fare: Inner zone	Second zone	Third zone	Zone boundaries
					(d) Points along Angeles Mesa Drive, private right of way, Market Street, and Hawthorne Boulevard between the intersection of 54th Street and Angeles Mesa Drive, City of Los Angeles, and intersection of Market Street and Arbor Vitae Street in the City of Inglewood.
					(e) Points along Annandale Boulevard and private right-of-way northerly of Buena Vista Terrace.
Third Zone....		15 cents	10 cents	7 cents or 6¼ cents by token fare.	(a) Points along South Broadway or Moneta Avenue between 112th Street and 116th Street.
					(b) Points along Vermont Avenue between 114th Street and 116th Street.

(c) Points along Hawthorne Boulevard between Arbor Vitae Street, City of Inglewood, and Broadway, City of Hawthorne.

Transfers will be issued as specified thereon, subject to general transfer rules.

[fol. 190] Page No. 5

Item 11—List of Motor Coach Lines:

Line No.	Line name	Termini
14.	Alvarado St.	North: Alvarado St. & Sunset Blvd. South: Hoover St. & Washington Blvd.
1.	Avalon-San Pedro St	North: 59th Pl. & Avalon Blvd. South: Manchester Ave. & San Pedro St. Manchester Ave. & Avalon Blvd.
5.	Beverly Blvd.	East: Beverly Blvd. & Vermont Ave. West: Beverly Blvd. & Harper Ave.
11.	Eagle Rock	East: Annandale Blvd. & Buena Vista Terrace. South: Colorado Blvd. & Eagle Rock Blvd.
18.	E. 9th St. & Whittier Blvd	East: Whittier Blvd. & Simmons Ave. West: E. 7th St. & Los Angeles St.
8.	Figueroa St.	North: Fifth St. & Hill St. South: Manchester Ave. & Figueroa St.

Line No.	Line name	Termini
9.	Florence Ave.	East: Clarendon St. & Pacific Blvd. (Huntington Pk.). West: Florence Ave. & So. Broadway (Los Angeles).
10.	Inglewood	North: 54th St. & Mesa Drive (Los Angeles). South: Queen St. & Market St. (Inglewood).
15.	Manchester Ave.	East: Manchester Ave. & Cedar St. West: Queen St. & Market St. (Inglewood).
7.	Melrose Ave.	East: Melrose Ave. & Western Ave. West: Melrose Ave. & La Cienega Blvd.
13.	Normandie Ave.	North: 54th St. & Normandie Ave. South: Florence Ave. & Normandie Ave.
2.	No. Lincoln Park Ave.	North: Borel St. & Sierra St. South: North Broadway & Lincoln Park Ave.
6.	Santa Fe Ave.	North: Center Ave. (Vernon) & Santa Fe Ave. South: Florence Ave. & Santa Fe Ave.
16.	So. Main St.	North: Slauson Ave. & Main St. South: Manchester Ave. & Main St.
17.	Verdugo Road	North: Verdugo Road & Plumas Ave. South: Verdugo Road & Glassell Ave.
12.	Washington-Adams	First: Washington Blvd. & Rimpau Blvd. Second: Adams St. & Alsace Ave.
4.	York Blvd.	East: Ave. 50 and York Blvd. West: Glassell Ave. & York Blvd.

[fol. 191] Page No. 6

Item 12—Grouping of Motor Coach Lines:

Group	Motor coach line No.	Motor coach lines
A	14	Alvarado St. Line.
	5	Beverly Blvd. Line—East of Larchmont Ave.
	13	Normandie Ave. Line.
	2	No. Lincoln Park Ave. Line.
	6	Santa Fe Ave. Line.
	1	Avalon-San Pedro St. Line.
	16	So. Main St. Line.
	4	York Blvd. Line.
B	5	Beverly Blvd. Line—Between Larchmont Ave. & Fairfax Ave.
	11	Eagle Rock Line.
	9	Florence Ave. Line.
	10	Inglewood Line.
	15	Manchester Ave. Line (East)—Vermont to Cedar St.
	15	Manchester Ave. Line (West)—Vermont to Queen and Market Sts.
	7	Melrose Ave. Line—East of Fairfax Ave.
	17	Verdugo Road Line.
	12	Washington-Adams Line.
C	8	Figueroa St. Line.
	18	E. 9th St. & Whittier Blvd. Line.
D	7	Melrose Ave. Line—West of Fairfax Ave.
	5	Beverly Blvd. Line—West of Fairfax Ave.

[fol. 192] Page No. 7

Item 13—Fares on Motor Coach Lines and Transfer Privileges between them and Rail Lines of Los Angeles Railway:

Group	One-way fare	Free transfer privileges to or from
A	7¢ cash 6-¼¢ by token fare.	Group A motor coach lines and rail lines in Inner Zone direct or via Group A motor coach lines.

Group	One-way fare	Free transfer privileges to or from
	10¢.....	Rail lines in Second Zone via rail lines in Inner Zone.
	15¢.....	Rail lines in Third Zone via rail lines in Inner and Second Zones.
B	7¢ cash 6-¼¢ by token fare.	None. Exception; transfers will be honored between Eagle Rock Motor Coach Line No. 11 and "E" rail line, good only north of Avenue 45.
	10¢.....	(a) Group B motor coach lines and rail lines in Inner Zone. (b) Group B motor coach lines and Group A motor coach lines by direct transfer, or via rail lines in Inner Zone.
C	10¢..... Does not apply between Group C motor coach lines.	(a) Group C motor coach lines and rail lines in Inner Zone. (b) Group C motor coach lines and Group A motor coach lines by direct transfer, or via rail lines in Inner Zone.
D	7¢ cash 6-¼¢ by token fare.	None.
	10¢ between points on same line in Group B.	None.
	15¢.....	(a) Group D motor coach lines and rail lines in Inner Zone via Lines 5 or 7—east of Fairfax Avenue. (b) Group D motor coach lines and Group A motor coach lines via Lines 5 or 7—east of Fairfax Avenue—and rail lines in Inner Zone.

Item 14—One-way Fares and Transfer Privileges Between Motor Coach and Rail Lines of Los Angeles Railway, Motor Coach Lines of Los Angeles Motor Coach Company and Local Lines of Pacific Electric Railway

Fares	From	To	Thence to
	L. A. Ry. Coach Lns. 1-2-4-5-6-7-13-14-16.....	L. A. Motor Coach Co. Lns..	L. A. Ry. Coach Lns. 1-2-4-5-6-7-13-14-16
	L. A. Ry. Coach Lns. 1-2-4-5-6-7-13-14-16.....	L. A. " " " " ..	L. A. Motor Coach Co. Lns.
	L. A. Ry. Coach Lns. 1-2-4-5-6-7-13-14-16.....	L. A. " " " " ..	L. A. Ry. Rail Lns. in IZ
10¢	L. A. Motor Coach Co. Lns.....	L. A. " " " " ..	Pacific Electric Ry. Local Cars*
	L. A. Ry. Rail Lns. in IZ.....	L. A. " " " " ..	L. A. Ry. Coach Lns. 1-2-4-5-6-7-13-14-16
	P. E. Ry. Local Cars*.....	L. A. " " " " ..	L. A. Ry. Coach Lns. 1-2-4-5-6-7-13-14-16
	P. E. Ry. Local Cars*.....	L. A. " " " " ..	L. A. Ry. Coach Lns. 1-2-4-5-6-7-13-14-16

For line number see Item 12 of this tariff.
IZ—Inner Zone.
*—Good only within local fare zone in which presented; destination to be reached without further transfer.

Exceptions

(a) Direct transfer between Los Angeles Railway cars or motor coaches and Pacific Electric Railway cars or motor coaches not permitted. Los Angeles Motor Coach Company lines must be used as intermediate carrier.

(b) Transfers will not be issued or honored to or from Los Angeles Motor Coach Company lines east of Sixth and Rampart Boulevard on Sunset Blvd. Line.

(c) If transfer is made to or from Los Angeles Motor Coach Company's Western Avenue Line, north of Wilshire Boulevard, good to or from 54th Street only; if made at or south of Wilshire Boulevard, good to or from Manchester Avenue only.

(d) On Los Angeles Railway Lines 5 and 7, transfer privilege does not apply west of Fairfax Avenue.

[fol. 194] Item 15—Explanation of Abbreviations:

L. A. M. C. Co.....Los Angeles Motor Coach Company
L. A. Ry.....Los Angeles Railway Corporation.
P. E. Ry.....Pacific Electric Railway Company.
Blvd.....Boulevard.
Ave.....Avenue.
St.....Street.
Lns.....Lines.
Pl.....Place.
Pk.....Park.
I Z.....Inner Zone.
2 Z.....Second Zone.
3 Z.....Third Zone.

End

[fol. 195] EXHIBIT "H" TO COMPLAINT

Present Rates of Fare

Only one Supplement to this Tariff may be in effect at any time.

NOTICE.—Fares named in this Tariff must not be used to make Through Charge on an Interstate Journey.

Los Angeles Railway Corporation

C. R. C. No. 5 (Cancels C. R. C. No. 4 and Supplement Thereto).

Local Passenger Tariff No. 5

(Cancels Local Passenger Tariff No. 4 and Supplement Thereto)

One Way, Round Trip and Commutation Fares and Special Cars Between Los Angeles, Cal., and Points on the Los Angeles Railway in California as Shown Herein

Issued September 10, 1915. Effective September 13, 1915.

Issued under special permission of the Railroad Commission of the State of California, No. 5249, of Sept. 3, 1915.

Issued by Howard Huntington, General Manager; C. A. Henderson, Ass't General Manager; E. L. Lewis, Superintendent, Los Angeles, California.

[fol. 196] Table of Contents

	Item No.	Page No.
Application of Fares	1	1
Application of Fares to or from Cities and Towns	2	1
Baggage	5	2
Children's Fares	3	1
Conditions:		
Ten-ride Tickets	10	2
Thirty-ride Family Tickets	11	2
Forty-ride Individual Tickets	26 & 28	6 & 7
Forty-six-ride Individual Tickets	12	3
Fifty-two-ride Individual Tickets	13	3
Dogs	6	2
Eagle Rock Valley Line	21	5
Eagle Rock Avenue Line	22	5
Fares—Commutation	17, 18, 19, 20	4, 5
One Way and Round trip	14, 15, 16, 25, 27	3, 4, 6
Funeral Car Rates	24	5
Index to Stations	..	1
Limit of Tickets	4	2
List of Stations	29	7
Redemption of Tickets	8	2
Sale of Commutation Tickets	9	2
Stopovers	7	2
Special Car Rates	23	5

[fol. 197] Index of Stations from and to Which Fares Apply

	Head line No,	Side line No.
Barryman	3-A	3
Cemetery	17-A	17
Edna St.	7-A	7
Fifty-fourth St.	15-A	15
Hawthorne	20-A	20
Howland Avenue	5-A	5
Hyde Park	16-A	16
Inglewood (Arbor Vitae)	18-A	18
Lennox (Belleview Ave.)	19-A	19

	Head line No,	Side line No.
Los Angeles	1-A	1
Manchester Avenue	2-A, 9-A	2, 9
Mountain View Avenue	4-A	4
Sunnyside—Olivito	10-A	10
Vermont Heights	12-A	12
West Athens	13-A	13
Woodcrest	11-A	11

[fol. 198] Rules and Regulations Governing This Tariff

Item No. 1.—Application of Fares:

Fares named herein apply in either direction between stations named, except as otherwise specifically provided in this Item.

Fares from intermediate stations not named to stations named will be the same as the fare from the next more distant station from which a fare is named.

Fares from stations named to intermediate stations not named will be the same as the fare to the next more distant station to which a fare is named.

Fares from intermediate stations not named to intermediate stations not named will be the same as the fare from and to the next more distant station from and to which a fare is named.

Item No. 2.—Application of Fares to or from Cities and Towns:

One-way and Round Trip fares named in this Tariff to or from stations shown below will apply to or from any point within the following defined limits:

Hyde Park: North, Elm St.; South, Flower St. (Curve).
Inglewood: North, Prairie Ave.; South, Arbor Vitæ.
Lennox: North, Arbor Vitæ; South, Belleview Ave.
Hawthorne: North, Belleview Ave.; South, Terminal.

Item No. 3.—Children's Fares:

For children five years and over but under twelve years of age, fare will be one-half the fare shown in this Tariff, adding sufficient when necessary to make the fare end in

"0" or "5." (Not applying to fares shown in City Limits, City of Los Angeles.) Children under five years, free, when accompanied by parent or guardian.

Reduction will not be made for children in Commutation Fares named herein.

Item No. 4.—Limit of Tickets:

Conductor's round-trip tickets are good only on date of sale, for going trip and within ten days from date of sale for return trip.

The limit of Commutation Tickets will be as follows:

Ten-ride—30 days from date of sale.

Thirty-ride—Tickets reading between Los Angeles and Monte Vista, Los Angeles and Edna Street, Los Angeles and West Athens, 90 days from date of sale; all others 30 days from date of sale.

Forty-ride—School term for which sold.

Forty-six-ride and fifty-two-ride—Calendar month for which sold.

Item No. 5.—Baggage:

Fares named herein do not include the transportation of baggage. Baggage will not be checked and none handled except such hand baggage as can be cared for by passenger.

[fol. 199] Item No. 6. Dogs:

For small lap dogs which are carried in the lap of the passenger, no charge will be made. (See Note.) Dogs other than lap dogs will not be transported on passenger cars.

NOTE.—The term "Lap Dog" is only applied to one that can be brought onto the car in the arms of a passenger and must be retained in the arms or lap of such passenger and in such manner as will not be offensive to or interfere with other passengers.

Item No. 7. Stopovers:

Stopover privileges are not allowed on tickets sold under this Tariff.

Item No. 8. Redemption of Tickets:

Tickets will not be redeemed except as follows:

One-way and round trip tickets of this Company's issue

will be redeemed to the orginal purchaser at fare paid when no portion of the trip has been made, and at the difference between fare paid and the published tariff fare between points used if trip was discontinued and not completed.

Commutation tickets of this Company's issue will be redeemed to the original purchaser at fare paid when no portion of ticket has been used, and at the difference between the fare paid and published round trip fare, for each two coupons used; when an odd number of coupons have been used, one way fare will be charged for the odd coupon.

Unused portion of 40-ride individual school ticket books purchased after May 1 of each year will be exchanged for same number of tickets good for following school year if accompanied by regular school ticket application.

Item No. 9. Conditions Governing Sale of Commutation Tickets:

Sale of commutation tickets must be made in accordance with the conditions printed thereon, and Agents must read contract of tickets carefully and see that all conditions are fully complied with.

Item No. 10. Ten-Ride Tickets:

Ten-ride tickets are good for purchaser and party, but will only be honored for transportation of others when presented by purchaser. Signature of purchaser must appear below contract on ticket.

Item No. 11. Thirty-ride Family Tickets:

Thirty-ride family tickets are good for passage of the purchaser, his wife, his dependent children, his household servants, and such relatives as permantly reside with and are supported by the purchaser. The purchaser must sign [fol. 200] his or her name in the place provided, and the names of such other persons as are entitled to ride on the ticket must be filled in when the ticket is purchased. A line must then be drawn through the remaining spaces, should there be any, after all names have been filled in.

Item No. 12. Forty-six Ride Individual Tickets:

Forty-six ride individual tickets are good only for passage of the purchaser whose signature must appear below

the contract on ticket, will be sold for use of persons 18 years of age and under, and will be honored only on cars arriving at destination between the hours of 7:00 A. M. and 6:00 P. M., but will not be honored on Saturdays or Sundays and the following legal holidays: New Year's Day, Memorial Day, Fourth of July, Thanksgiving Day, Christmas Day.

A certificate of form provided by this Company, signed by the parent or guardian of purchaser, and if not living with parent or guardian, signed by person with whom purchaser is living, certifying that he or she is not over 18 years of age, will be required for each ticket sold, and the certificate must be forwarded to the Auditor with ticket report covering sale of ticket.

Forty-six ride tickets will be sold for one-half of calendar month if desired, either 1st to 15th inclusive, or 15th to last inclusive, at one-half the price for full month ticket. Tickets sold for use from 1st to 15th inclusive, will be stamped on cover, Auditor's and Agent's stubs, "Not good for use after 15th day of month for which sold." When one-half of the ticket is sold, selling Agent will detach one-half of the coupons from the front part of the book and forward to the Auditor with ticket report covering sale of ticket.

Item No. 13. Fifty-two Ride Individual Tickets:

Fifty-two ride individual tickets are good only for passage of the purchaser whose signature must appear below the contract on ticket.

[fol. 201] Item No. 14. One-way and Round Trip Fares:

Between Los Angeles (4th Street) and	1A Los Angeles (4th St.)	2A Manchester Ave.	3A Barryman	4A Mountain View Ave.	5A Howland Ave.	6A Homeward Ave.	7A Edna St.
1. Homeward Ave. Line, Los Angeles (4th St.)							
2. Manchester Ave.	5						
3. Barryman	10	5					
4. Mountain View Ave.	10	5	5				
5. Howland Ave.	10	5	5	5			
6. Homeward Ave.	10	5	5	5	5		
7. Edna St.	15	10	10	5	5	5	
	25						

Light figures, one way; black figures; round trip.

[fol. 202] Item No. 15. One-way and Round-trip Fares:

Between Los Angeles (14th Street) and	8A Los Angeles (4th St.)	9A Manchester Ave.	10A Sunnyside—Olivito	11A Woodcrest	12A Vermont Heights	13A West Athens
8. Vermont Heights Line, Los Angeles (4th St.)						
9. Manchester Ave.	5					
10. Sunnyside—Olivito	10	5				
11. Woodcrest	10	5	5			
12. Vermont Heights	10	5	5	5		
13. West Athens	15 25	10	5	5	5	

[fol. 203] Item No. 16:

Between Los Angeles (Plaza) and	14A Los Angeles (Plaza)	15A 54th St.	16A Hyde Park	17A Cemetery	18A Inglewood	19A Lennox	20A Hawthorne
14. Hawthorne Line, Los Angeles (Plaza)							
15. 54th St.	5						
16. Hyde Park	10	5					
17. Cemetery	10	5	5				
18. Inglewood (Arbor Vitae)	10	5	5	5			
19. Lennox (Belleview Ave.)	15 25	10	10	10	5		
20. Hawthorne	15	10	10	10	5	5	

Light figures, one way; black figures; round trip.

[fol. 204] Item No. 17. Commutation Fares:

Between Los Angeles (4th St.) and	10-Ride Purchaser and party	30-Ride Family	46-Ride Individual	52-Ride Individual
Homeward Avenue Line:				
Westland Ave.	$.70	....	....	....
Mountain View Ave.	.70	....	....	....
Howland Ave.	.70	....	....	....
Miner	.70	....	....	....
Homeward Ave.	.80	$1.50	....	....
Monte Vista	1.05	3.10	$3.55	$4.10
Edna Street	1.10	3.15	3.60	4.15

[fol. 205] Item No. 18:

Between Los Angeles (12th and Main Sts.) and	30-ride family
Eagle Rock Valley Line, Townsend Ave.	$1.50

[fol. 206] Item No. 19. Commutation Fares:

Between Los Angeles (4th Street) and	10-ride, purchaser and party	30-ride, family	46-ride, individual	52-ride, individual
Vermont Heights Line:				
Sunnyside—Olivito	$.80	.....	.....	.....
Wood Crest	.80	.....	.....	.....
Corinth Heights	.90	.....	.....	.....
Vermont Heights	.90	$1.50	.....	.....
West Athens	1.10	3.15	$3.00	$4.15

[fol. 207] Item No. 20:

Between Los Angeles (Plaza) and	10-ride, purchaser and party	30-ride, family	46-ride, individual	52-ride, individual
Hawthorne Line:				
Slauson Ave.	$.70	.....	.....	.....
Hyde Park	.80	.....	.....	.....
Centinela	1.00	.....	.....	.....
Inglewood (Arbor Vitae)	1.00	$1.50	.....	.....
Lockhart	1.10	.....	.....	.....
Lennox (Belleview Ave.)	1.10	2.25	.....	.....
Hawthorne	1.25	3.00	$4.30	$4.75

[fol. 208] Item No. 21:

Eagle Rock Valley Line

Townsend Ave., Eagle Rock, Glassell Road, Los Angeles, 5 cents.

Item No. 22:

Eagle Rock Avenue Line

Eagle Rock Road to Springvale Drive, (City Limits), 5 cents.

From any point between Buena Vista Terrace and Springvale Drive (City Limits) to any point in the city of Los Angeles reached by the Eagle Rock Ave. cars of the Main St. Line, 5 cents without transfer privilege.

Item No. 23:

Special Car Rates

$5 for first hour, $3 per hour for each additional hour, from time of leaving car house to return to car house. Minimum charge $5.00.

Item No. 24:

Funeral Car Rates

From all funeral parlors to Inglewood Cemetery	$20.00
From Residences to funeral parlors, thence to Inglewood Cemetery	25.00
From Residences in district south of First St., west of Central Ave., east of Figueroa and north of Slauson Ave., to Inglewood Cemetery	20.00
From all other points within the city limits to Inglewood Cemetery	25.00
From points on Eagle Rock Valley & Hawthorne line south of Arlington St. and north of Glassell Road (north city limits), to all cemeteries in Los Angeles and just east of Los Angles	25.00
From points on the Hawthorne branch, south of Inglewood to Inglewood Cemetery	15.00
From points south of Slauson Ave. on Vermont Ave., Hoover St. or Moneta Ave., to all cemeteries, including Inglewood	25.00
From points on Eagle Rock Valley Line (north city limits) to Inglewood Cemetery	30.00
For Extra cars in connection with funeral cars to Inglewood Cemetery	15.00
For Extra cars, when funeral car is not available, extra charge for casket	2.50

Item No. 25:

The following lines, 5 cents, with transfer privileges:

West Adams Line—32nd Ave. (Terminus) to Sprague Ave. (City Limits)—to points in City of Los Angeles.

West Washington Street Line—Rimpau Ave. (Terminus) to Sprague Ave. (City Limits)—to points in City of Los Angeles.

[fol. 209] Grand Ave. and N. Broadway Line—Mesa Drive (Terminus) to Van Ness Ave. (City Limits)—to points in City of Los Angeles.

East First Street Line—Blanchard Street (Terminus) to Indiana Street (City Limits)—to points in City of Los Angeles.

Stephenson Ave. Line—Cemeteries (Terminus) to Indiana Street (City Limits)—to points in City of Los Angeles.

Santa Fe Ave. Line—Cudahy Street (Terminus) to Edwin Street (City Limits)—to points in City of Los Angeles.

East 4th Street Line—Stephenson Ave. (Terminus) to Indiana Street (City Limits)—to points in City of Los Angeles.

Item No. 26:

40-ride Individual School Tickets

Forty-ride Individual School Tickets will be sold for $1.00, good between terminus and City Limits and good only for passage of purchaser, whose signature must appear below contract on ticket; will be sold for use of persons under 18 years of age, and will be honored only on cars between the hours of 7 A. M. and 6 P. M., on regular school days only, and will not be honored on Saturdays or Sundays and the following legal holidays: New Year's Day, Memorial Day, Fourth of July, Thanksgiving Day, Christmas Day.

A certificate of form provided by this Company, signed by the Principal of school at which child attends, certifying that he or she is not over 18 years of age, will be required for each ticket sold, and the certificate must be forwarded to the Auditor with ticket report covering sale of ticket, this being franchise requirements on the following lines:

West Adams St. Line—32nd Ave. (Terminus) to Sprague Ave. (City Limits.)

West Washington St. Line—Rimpau Ave. (Terminus) to Sprague Ave. (City Limits).

East First St. Line—Blanchard St. (Terminus) to Indiana St. (City Limits).

Stephenson Ave. Line—Cemeteries (Terminus) to Indiana St. (City Limits).

Santa Fe Ave. Line—Slauson Ave. to Edwin St. (City Limits).

East Fourth St. Line—Stephenson Ave. (Terminus) to First and Indiana St. (City Limits).

Eagle Rock Ave. Line—Buena Vista Terrace to Springvale Drive (City Limits).

[fol. 210] Item No. 27:

Fare in City of Los Angeles

Fares on lines within City Limits of City of Los Angeles will be 5 cents.

Transfers will be issued as specified in Transfer Rule Book.

Item No. 28. Forty-ride Individual School Tickets:

Forty-ride individual school tickets will be sold for $1.00, are good only within the City Limits of Los Angeles, for passage of purchaser, whose signature must appear in space provided in contract. They will be sold only to persons under 18 years of age attending free public schools, or schools of like nature where no tuition is charged, and will be honored only between the hours of 7:00 A. M. and 6:00 P. M. on regular public school days, but will not be honored on Saturdays, Sundays or the following legal holidays: New Year's Day, Memorial Day, Fourth of July, Thanksgiving Day, Christmas Day.

A certificate of form provided by this Company, signed by Principal of school attended, or his authorized representative, certifying that the student desiring to purchase such ticket is an attendant of such school and is under 18 years of age, will be required for each ticket sold, and such certificate must be forwarded to Auditor with ticket report covering sale of ticket.

[fol. 211] Item No. 29:

List of Stations (Arranged Geographically)

Hawthorne Line

54th St.
55th St.
Slauson Ave.
Elm St. } Hyde Park.
Hill St.
Chestnut St.
Flower St.
Centinela Sub-Sta.
Cemetery

Prairie Ave. } Inglewood
Centinela
Inglewood Ave.
Regent St.
Queen St.
Pimiento St.
Nutwood St.
Kelso (Mango St.)
Commercial St.
Tamarack St.
Arbor Vitæ

Lockhart (Pine St.)
Palm St.
Lennox (Olivia Ave.)
Center St.
Neff—(Belleview Ave.)
Fairfax Park (Miramar St.)
Wallace
Kenwood Ave.
Hawthorne

Homeward Ave. Line

Manchester Ave.
Barryman
Westland
Mountain View Ave. (96th St.)
Howland Ave. (98th St.)

List of Stations—Continued

Homeward Ave. Line—Continued

Miner
Homeward Ave. (112th St.)

Monte Vista (114th St.)
Edna St. (117th St.)

Vermont Hts. Line

Manchester Ave.
89th St.
90th St.
91st St.
92nd St.
Sunnyside—Olivito (94th St.)
Haddock Villa
Old Sunnyside
Independence (106th St.)
Woodcrest (110th St.)
Corinth Hts.
Vermont Hts. (114th St.)
Delta Ave. (117th St.)
West Athens (120th St.)

[fol. 212] Only one Supplement to this Tariff may be in effect at any time.

NOTICE.—Fares named in this Tariff must not be used to make Through Charge on an Interstate Journay.

Los Angeles Railway Corporation

Supplement No. 3 (Cancels Supplement No. 2) to C. R. C. No. 5.

Supplement No. 3 (Cancels Supplement No. 2) to Local Passenger Tariff No. 5, One-Way, Round-Trip and Commutation Fares, and Special Cars Between Points on Lines of the Los Angeles Railway in California, as shown in Tariff; also Local Fares Within Cities

Issued October 3, 1923. Effective October 10, 1923.

Issued under authority of Rule 7 of General Order No. 51 of the Railroad Commission of the State of California.

Issued by C. V. Means, Traffic Manager, Los Angeles, Cal.

Los Angeles, California.

[fol. 213] Item No. 14, Page 3:

(2) Change Edna Street, Side Line No. 7, Head Line No. 7A to Lary.

Item No. 15, Page 4:

(2) Change West Athens, Side Line No. 13, Head Line No. 13A to West Athens (Delta Ave.)

Item No. 17, Page 4:

(2) Change Edna Street to Lary.

Item No. 19, Page 5.

(2) Change West Athens to West Athens (Delta Ave.)

Item No. 24, Page 5.

(1) Add the following:

From points in 5 cent limits, City of Los Angeles to Cemeteries in 5 cent limits, $15.00.

For extra car in connection with Funerals in 5 cent limit, City of Los Angeles to Cemeteries in 5 cent limit, $10.00.

Funerals moved from Residence or Church or from Funeral Parlors to Residence or Church and thence to Cemeteries, add to tariff, $5.00.

Item No. 25, Page 6:

(1) Add the following:

Griffith and Griffin Ave. Line—Cudahy Street (Terminus) to Alameda Street (City Limits) to points in the City of Los Angeles.

Indiana Street Line—From points on Indiana Street to points in City of Los Angeles.

Item No. 25, Page 6:

(1) Change the following:

East Fourth Street Line—Change to read: Indiana Street Line.

Santa Fe Ave. Line—Cudahy Street (Terminus) to 57th Street (Terminus).

Item No. 25-A:

(3) Wilshire Boulevard Bus Line—Termini: West—Wilshire Boulevard and La Brea; East—Olive and Eighth Streets.

Fare ten (10) cents to include free transfer privilege to any intersecting line of the Los Angeles Railway within the local fare limits or on presentation of transfer from intersecting line of the Los Angeles Railway and payment of five (5) cents.

Item No. 26, Page 6:

(1) Item No. 26 canceled. Fare named in Item No. 28 will apply.

[fol. 214] Item No. 27, Page 6:

(1) Add following:

Full fare for children five years of age and over. Only two children under five years of age accompanied by an older person will be allowed to ride free. If there are more than two children, collect one fare for each additional child.

Item No. 28:

(1) Forty-ride individual school tickets will be sold for $1.00, are good on lines over which a 5 cent fare is charged, within City Limits of Los Angeles and also from points on lines outside the City Limits of Los Angeles, where a 5 cent fare is charged to points in City of Los Angeles, good only for passage of purchaser, whose signature must appear in space provided in contract. They will be sold only to persons under 18 years of age attending free public schools or schools of like nature where no tuition is charged, and will be honored only between the hours of 7:00 A. M. and 6:00 P. M. on regular public school days, but will not be honored on Saturdays, Sundays or the following legal holidays: New Year's Day, Memorial Day, Fourth of July, Thanksgiving Day, Christmas Day.

A certificate of form provided by this Company, signed by Principal of school attended or his authorized representative, certifying that the student desiring to purchase such ticket is an attendant of such school and is under 18 years of age will be required for each ticket sold and such

certificate must be forwarded to Auditor with ticket report covering sale of ticket.

(1) Reissue: Effective February 7, 1916, in Supplement No. 1.

(2) Reissue: Effective March 26, 1916, in Supplement No. 2.

(3) Issued under authority of Rule 7 of General Order No. 51 of the Railroad Commission of the State of California.

[fol. 215] Only one supplement of this tariff will be in effect at any one time.

C R C No. 17 (Cancels C R C No. 16 and supplement thereto.)

Los Angeles Railway Corporation Motor Coach Division

Local and Joint Passenger Bus Tariff No. 9 (Cancels L. and J. P. T. No. 8 and Supplement Thereto)

Naming One-way Fares Between Points in Los Angeles, Calif., and Points on the Los Angeles Railway Motor Coach Lines in California, as Shown Herein

Fares and arrangements named in this Tariff also apply from and to points on the lines of the Pacific Electric Railway Company and the Los Angeles Motor Bus Company, and via their lines, whose concurrences are filed with the Railroad Commission in the State of California, as follows:

Pacific Electric Railway Company..... P. 2, No. 24
Los Angeles Motor Bus Company..... P. 2, No. 2

Issued November 26th, 1927. Effective November 30th, 1927.

Issued under authority of Rule No. 7 of General Order No. 51 of the Railroad Commission of the State of California.

Issued by C. V. Means, Traffic Manager Los Angeles Railway, Los Angeles, California.

(Page 1.)

[fol. 216] Rules and Regulations Govering This Tariff

Handling of Baggage, Packages, and Dogs

1. Baggage will not be checked and only such hand baggage carried as can be cared for by passengers without inconvenience to other passengers. Long, bulky or odorously offensive packages or articles, the nature of which would render the handling thereof a hazard, will not be carried.

Dogs will not be carried.

Application of Rates.

Fares named herein are for continuous passage in either direction and are intermediate in application.

Fares for Children

3. No reduction will be made in fares for children, except that not more than two (2) children under five (5) years of age will be carried free when accompanied by parent or guardian.

Fare Limits

4. For description of Los Angeles five (5) cent fare limits, see L. A. Railway Local Passenger Tariff #5, C. R. C. #5, supplement thereto or re-issues thereof.

Designation of Lines

Feeder lines:

1. San Pedro St. Line.
2. No. Lincoln Park Line.
4. York Blvd. Line.
5. Beverly Blvd. Line.
6. Santa Fe Ave. Line.
11. Eagle Rock Line.
13. Normandie Ave. Line.
14. Alvarado St. Line.
16. South Main St. Line.
19. La Brae Ave. Line.

Local lines:

3. Wilshire Blvd. Line.
7. Melrose Ave. Line.
8. Figueroa St. Line.
9. Florence Ave. Line.
10. Inglewood Line.
12. Washington-Adams Line.
15. Manchester Ave. Line.
17. Verdugo Road Line.
18. Mines Ave. & Whittier Blvd. Line.
20. Crescent Blvd. Line.

Explanation of Abbreviations

L. A. M. B. Co	Los Angeles Motor Bus Company.
L. A. Ry	Los Angeles Railway Corporation.
P. E. Ry	Pacific Electric Railway Company.
Blvd	Boulevard.
Ave	Avenue.
St	Street.
Lns	Lines.
Rd	Road.

(Page 2.)

[fol. 217]

Lines

Section 6.—

14. Alvarado St. Line—Termini	North: Alvarado St. & Sunset Blvd. South: Hoover St. & Washington Blvd.
5. Beverly Blvd. Line—Termini	East: Beverly Blvd. & Vermont Ave. West: Beverly Blvd. & Harper Ave.
20. (A) Crescent Blvd. Line—Termini	East: Wilshire Blvd. & Fairfax Ave. North: Third St. & Crescent Heights Blvd.

Lines—Continued

11. Eagle Rock Line—Termini	East: Annandale Blvd. & Buena Vista Terrace. South: Colorado Blvd. & Eagle Rock Blvd.
8. (B) Figueroa St. Line—Termini	North: Fifth St. & Hill St. South: Manchester Ave. & Figueroa St.
9 Florence Ave. Line—Termini	East: Clarendon St. & Pacific Blvd. (Huntington). West: Florence Ave. & So. Broadway (Los Angeles).
10. Inglewood Line—Termini	North: 54th St. & Mesa Drive (Los Angeles). South: Queen St. & Market St. (Inglewood).
19. (C) La Brea Ave. Line—Termini	North: Wilshire Blvd. & La Brea Ave. South: Edgewood Rd. & Redondo Blvd.
15. Manchester Ave. Line—Termini	East: Manchester Ave. & Cedar St. West: Queen St. & Market St. (Inglewood)
7. Melrose Ave. Line—Termini	East: Melrose Ave. & Western Ave. West: Melrose Ave. & Orlando Ave.
18. Mines Ave.—Whittier Blvd. Line—Termini	East: Whittier Blvd. & Simmons Ave. West: Seventh St. & Los Angeles St.

Lines—Continued

13. Normandie Ave. Line—Termini	North: 54th St. & Normandie Ave. South: Florence Ave. & Normandie Ave.
[fol. 218] 2. North Lincoln Park Ave. Line—Termini	North: Mercury St. & Sierra St. South: North Broadway & Lincoln Park Ave.
6. Santa Fe Ave. Line—Termini	North: Center Ave. & Santa Fe Ave. South: Florence Ave. & Santa Fe Ave.
1. San Pedro St. Line—Termini	North: 59th Place & Avalon Blvd. South: Manchester Ave. & San Pedro St.
16. South Main St. Line—Termini	North: Slauson Ave. & Main St. South: Manchester Ave. & Main St.
17. Verdugo Road Line—Termini	North: Plumas St. & Verdugo Rd. South: Glassell Ave. & Verdugo Rd.

(A) New line—Authority Board Public Utilities & Transportation, City of Los Angeles, dated Oct. 6th, 1927, File 211.7 Petition 18743.

(B) Change in terminal account of extension of line.

(C) La Brea Ave. service separated from Wilshire Blvd. Line 3 and operated as separate line.

(Section 6, continued on page 4)

[fol. 219] Lines

12. Washington-Adams Line—Termini	East: Washington Blvd. & Rimpau Blvd. East: Adams St. & Alsace Ave.
3. (B) Wilshire Blvd. Line—Termini	East: Fifth St. & Hill St. West: (Fairfax Ave. & Wilshire Blvd. McCarthy Vista & Eulalia Blvd.)
4. York Blvd. Line—Termini	East: Ave. 50 & York Blvd. West: Glassell Road & York Blvd.

Fares and Transfer Privileges

Section 7

One way fare	Points between which fares apply	Transfer privileges
	Group "B"—All points on lines.	
	(3) Wilshire Blvd. Line (West of Fairfax Ave.)	
	(5) Beverly Blvd. (Between Larchmont & Fairfax).	
	Beverly Blvd. (West of Fairfax Ave.)	
	(7) Melrose Ave. (East of Fairfax Ave.)	
5¢	Melrose Ave. (West of Fairfax Ave.)	
	(9) Florence Ave.	
	(10) Inglewood.	No Transfer Issued or Honored.
	(12) Washington-Adams.	
	(15) Manchester Ave. (East of Vermont Ave.)	
	Manchester Ave. (West of Vermont Ave.)	
	(17) Verdugo Road.	
	(C) (19) La Brea Ave. Line.	
	(A) (20) Crescent Blvd. Line.	

NOTE.—Fares do not apply between lines 3, 5, 7, 9, 10, 12, 15, 17, 19 and 20.

Fares and Transfer Privileges—Continued

One way fare	Points between which fares apply	Transfer privileges
	Group "A"—All points on lines.	
5¢	(1) San Pedro. (2) No. Lincoln Park. (4) York Blvd. (5) Beverly Blvd. (East of Larchmont Blvd.) (6) Santa Fe Ave. (13) Normandie Ave. (14) Alvarado St. (16) So. Main St.	To and from connecting Los Angeles Railway car lines within five (5) cent fare limits of Los Angeles.
5¢	Group "C"—All points on lines.	
	(11) Eagle Rock.	To and from L. A. R'y. "E" car line to points between Avenue 45 and Townsend Ave.

(A) New Line.
(B) Change in terminal account extension of line.
(C) La Brea Ave. service separated from Wilshire Blvd. Line.
(Section 7 continued on page 5.)

[fol. 220A]

Fares and Transfer Privileges

Section 7 (Continued)

Group "D"—All points on lines.

(8) Figueroa St.
(18) Mines Ave.—Whittier Blvd.
NOTE.—Fares do not apply between lines 8 and 18.

(3) Wilshire Blvd. (East of Fairfax Ave.)
NOTE.—Fares do not apply between line 3 and Group "B" lines, Group "C" lines, or lines 8 or 18 in Group "D," except line 19 in Group "B."

10¢

To and from connecting Los Angeles Railway car lines, Group "A" motor coach cent fare limits and on Motor Coach lines shown in Group "A."

To and from connection Los Angeles Railway car lines within Los Angeles five (5) cent fare limits or connecting Los Angeles Motor Bus Co. lines, thence to Pacific Electric local lines. See exceptions 1, 2 and 3.

All points on lines.

(1) San Pedro.
(2) No. Lincoln Park.
(4) York Blvd.
(5) Beverly Blvd. (East of Fairfax Ave.)
(6) Santa Fe Ave.
(13) Normandie Ave.
(14) Alvarado St.
(16) So. Main St.

To and from connecting Los Angeles Railway car lines within Los Angeles five (5) lines and motor coach line 3 in Group "D"; also Los Angeles Motor Bus Co. lines, thence to Pacific Electric R'y. local lines within fare zone in which presented without further transfer. See exceptions 1, 2 and 3.

Fares and Transfer Privileges—Continued

One way fare	Points between which fares apply	Transfer privileges
	All points on line.	
	(7) Melrose Ave. (East of Fairfax Ave.)	To and from connecting Los Angeles Railway car lines, Group "A" motor coach lines and motor coach line 3 in Group "D"; also Los Angeles Motor Bus Co. lines, thence to Pacific Electric R'y. local lines within fare zone in which presented without further transfer. See exceptions 1, 2 and 3.
	40-ride School ticket book good on lines	
$1.00	(1) San Pedro. (4) York Blvd. (2) No. Lincoln Park. (16) So. Main St. (5) Beverly Blvd. (East of Larchmont)	To and from connecting Los Angeles Railway car lines within Los Angeles five (5) cent fare limits.

Exceptions:

No. 1. Direct transfer between L. A. R'y. cars or motor coaches and Pacific Electric R'y. cars or buses not permitted. Los Angeles Motor Bus Company lines must be used as intermediate carrier.

No. 2. Transfers will not be issued or honored to or from L. A. Motor Bus Company lines east of Sixth and Rampart Boulevard on Sunset Boulevard line.

No. 3. If transfer is made to or from L. A. Motor Bus Company's Western Avenue line, north of Wilshire Boulevard, good to or from 54th Street only; if made at or south of Wilshire Boulevard, good to or from Manchester Avenue only.

(Page 5)

[fol. 220B] Supplement No. 4 cancels Supplement No. 3 to C. R. C. No. 17

Los Angeles Railway Corporation

Motor Coach Division

Supplement No. 4 Cancels Supplement No. 3 to Local and Joint Passenger Coach Tariff No. 9

Naming one-way fares between points in Los Angeles, California, and points on the Los Angeles Railway Motor Coach Lines in California, as shown herein.

Fares and arrangements named in this Tariff also apply from and to points on the lines of the Pacific Electric Railway Company and the Los Angeles Motor Coach Company, and via their lines, whose concurrences are filed with the Railroad Commission of the State of California, as follows:

Pacific Electric Railway Company..... P. 2, No. 24
Los Angeles Motor Coach Company..... P. 2, No. 4

Issued May 1st, 1928. Effective May 4th, 1928.

Issued under authority of Railroad Commission of the State of California, Application No. 14590, Decision No. 19668, dated April 25th, 1928.

Issued by C. V. Means, Traffic Manager, Los Angeles Railway, Los Angeles, California.

[fol. 220C] Refer to—

(A) Section 5, Page No. 2, Section 6, Page #3, Section 7, Page No. 4 and cancel fares and description of Crescent Boulevard Line No. 20, account of abandonment of service, authority Board of Public Utilities & Transportation, City of Los Angeles, dated January 18th, 1928. File 211.7—18743.

Refer to—

(B) Section 6, Page No. 3, San Pedro St. Line No. 1 and change:

No. 1. Avalon Blvd.-San Pedro St.—North: 59th Pl. & Avalon Blvd. South: Avalon Blvd. & Manchester Ave., San Pedro St. & Manchester Ave.

Loop service each direction via Avalon Blvd, Manchester Ave. San Pedro St. and 59th Pl.

(B) Page 2, Rules and Regulations governing tariff and Section 7, Pages 4 and 5 and change name of San Pedro St. Line No. 1 to Avalon Blvd.-San Pedro St. Line No. 1.

Refer to—

(C) Section 6, Page No. 3, Original Tariff and change terminal account of extension of line.

No. 7. Melrose Ave.—West: Melrose Ave. & La Cienega Blvd.

Refer to—

(D) Section 5, Page 2, Section 6, Page No. 3, Section 7, Pages Nos. 4 and 5 and cancel fares and description of La Brea Ave. Line No. 19 and Wilshire Blvd. Line No. 3, account abandonment of service by this Company, fares and transfer privileges applying on these lines will hereafter be found in Los Angeles Motor Coach Co. L. & J. P. T. No. 7, re-issues thereof and supplements thereto, C. R. C. No. 1.

(A) Re-issue—Effective March 5th, 1928, in Supplement No. 1 to C. R. C. No. 17.

(B) Re-issue—Effective April 17th, 1928, in Supplement No. 2 to C. R. C. No. 17.

(C) Re-issue—Effective April 17th, 1928, in Supplement No. 3 to C. R. C. No. 17.

(D) Issued under Authority of Railroad Commission of the State of California, Application No. 14590, Decision No. 19668, dated April 25th, 1928.

End

[fols. 221 & 222] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF MOTION FOR INTERLOCUTORY INJUNCTION—Filed June 22, 1928

To His Excellency Honorable C. C. Young, Governor of the State of California, Executive Mansion, Sacramento, California; to the Honorable U. S. Webb, Attorney General of the State of California, Sixth Floor, State Building, San Francisco, California; to the Railroad Commission of the State of California, Fifth Floor, State Building, San Francisco, California:

You and each of you will please take notice that the undersigned will move this court on Thursday, July 12th,

1928, before the Honorable Wm. P. James, judge thereof, at the opening of court on said day, or as soon thereafter as counsel can be heard, for an interlocutory injunction in accordance with the prayer therefor in the verified bill of [fol. 223] complaint herein.

Said motion will be made on said bill of complaint and on the affidavits supporting said bill of complaint and this motion.

Dated Los Angeles, California, June 22nd, 1928.

Gibson, Dunn & Crutcher, by S. M. Haskins, Solicitors for Plaintiff. Woodward M. Taylor, Paul R. Watkins, of Counsel.

[File endorsement omitted.]

[fol. 224] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR INTERLOCUTORY INJUNCTION—Filed June 22, 1928 (Under Sec. 380, United States Code)

To the Honorable the District Court of the United States for the Southern District of California, Southern Division:

Upon the bill of complaint herein, verified June 22nd, 1928; the subpœna ad respondendum issued thereon; the affidavits of G. J. Kuhrts, Richard Sachse and Phil. B. Harris, each verified June 22nd, 1928, and upon all the papers and proceedings filed or had herein and in connection herewith;

The plaintiff above named hereby makes application:

1. For an order enjoining and restraining, pending the final order in this action and until the further order of this court, the defendant Railroad Commission of the State of California and its members, officers, attorneys, agents, servants and employees, and any and every person acting, or claiming, assuming or attempting to act under and by [fol. 225] virtue of the authority of said commission, and any and all other persons, associations and corporations, municipal or otherwise, who now or shall hereafter seek or

attempt to enforce Decision and Order No. 19521 of said commission or plaintiff's existing rates of fare, or seek or attempt to take any steps or proceeding whatsoever under or pursuant to or by virtue of said Decision and Order No. 19521 or otherwise for the enforcement of said existing rates of fare.

(a) From enforcing or attempting to enforce or from advising, instituting, prosecuting or aiding in any action, suit or proceeding, or otherwise, to enforce said decision and order or said existing rates of fare against plaintiff or otherwise, or against any of the officers, agents, or employees of plaintiff or any of them.

(b) From taking any steps or proceedings whatsoever under or pursuant to or by virtue of said decision and order or otherwise, or from advising, instituting, prosecuting or aiding any action, suit or proceeding of any kind or character under the laws of the state of California, or otherwise, to recover from or impose upon or enforce against plaintiff or any of its officers, agents or employees or any of them, any fine, penalty, damages or demand for failure or refusal to obey, observe or comply with said decision and order or for failure or refusal to charge and collect said existing rates of fare, and

(c) From interfering with or attempting to interfere with, or from advising, instituting, prosecuting or aiding in any act, action, suit or proceeding to interfere with, restrain or prevent plaintiff, or any of its officers, agents or employees, or any of them, from putting into effect or from charging and/or collecting the rates of fare proposed [fol. 226] by plaintiff in this bill.

2. And for such other and further relief as to the court shall seem just and proper in the premises.

For all of which no previous application has been made to any other court or judge.

Dated Los Angeles, California, June 22nd, 1928.

Gibson, Dunn & Crutcher, by S. M. Haskins, Solicitors for Plaintiff. Woodward M. Taylor, Paul R. Watkins, of Counsel.

[fol. 227] [File endorsement omitted.]

[fol. 227-a1] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER SETTING HEARING ON MOTION FOR INTERLOCUTORY INJUNCTION—Filed June 22, 1928

Plaintiff herein having applied for an Interlocutory Injunction in the terms prayed for in its verified Bill of Complaint and it appearing that the case is one in which such motion should be made and heard pursuant to the provisions of Section 380, United States Code (formerly Section 266 Judicial Code);

Now, therefore, it is hereby ordered that the defendant Railroad Commission of the State of California appear before the undersigned Judge of this District Court and a Circuit Judge of the United States and a District Judge of the United States (or another Circuit Judge of the United States), who shall sit to hear the matter of the issuance of said Interlocutory Injunction, on the 12 day of July, 1928, at 10 o'clock A. M. of said day in the court room of the United States District Court aforesaid, at the Federal Building at Temple and Main Streets in the City of Los Angeles, State of California, and that said defendant Railroad Commission shall then and there show cause, if any it has, why the Interlocutory Injunction prayed for in said Bill should not issue.

[fol. 227-a2] It is further ordered that a copy of this order certified under the hand of the Clerk and the seal of this Court, and a similarly certified copy of said Bill of Complaint, together with similarly certified copies of the affidavits of George J. Kuhrts, Phil B. Harris and Richard Sachse, in support of said Bill of Complaint and of said motion for Interlocutory Injunction filed with the Clerk of this Court with said Bill, shall be served forthwith, but not less than five (5) days before said day of hearing, upon said defendant Railroad Commission of the State of California and upon the Honorable C. C. Young, Governor of the State of California, and upon the Honorable U. S. Webb, Attorney General of the State of California.

It is further ordered that at the time and place set as aforesaid for the hearing of said motion for an interlocutory Injunction, said motion shall be proceeded with in ac-

cordance with Section 380 United States Code (formerly Section 266 Judicial Code) and the rules of practice of this Court.

Done in said Southern District of California on this 22 day of June, 1928.

(Signed) Wm. P. James, Judge.

[File endorsement omitted.]

[fols. 227-a3–227-a6] Summons and marshal's returns filed June 28, 1928, omitted in printing.

[fol. 228] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION OF CITY OF LOS ANGELES FOR LEAVE TO INTERVENE—Filed July 6, 1928

Comes now the City of Los Angeles, a municipal corporation, duly incorporated and operating under a freeholders' charter under the provisions of the Constitution of the State of California, having its domicile in the County of Los Angeles, State of California, and within the Southern District of the State of California, Southern Division, and moves the Court for leave to intervene as a party defendant in the above entitled case, and presents to the Court that it is interested in and affected by the matters alleged in the amended bill of complaint filed in this cause:

Petitioner further presents that it is, and the inhabitants living within its boundaries are, particularly interested and affected in the matter of the rate now in effect within the corporate limits of the said City of Los Angeles charged by the plaintiff for the service rendered by said plaintiff within the corporate limits of the said City, which said rate is sought, by the amended bill of complaint filed [fol. 229] herein, to be raised by an order of this Court;

That the rate in effect and charged by the plaintiff within the corporate limits of the City of Los Angeles for one continuous ride in the cars operated by the plaintiff within

said district has been established by virtue of ordinances passed by the City of Los Angeles; that said ordinances are franchises which have been accepted by the plaintiff herein; that said ordinances are contracts which contain terms and conditions, particularly a term limiting the rate of fare to be charged by the plaintiff herein within the corporate limits of the City;

That any order made by this Court granting relief to the plaintiff herein in the matter of the rate charged for service rendered within the boundaries of the City of Los Angeles will involve, concern, affect and abrogate the terms and conditions, regarding rate to be charged, of said ordinances, franchises and contracts;

Wherefore, Petitioner asks the Court to make and cause to be entered herein an order permitting it, the said City of Los Angeles, to intervene herein as a party defendant and for such further order as the Court may deem proper in the premises.

Jess E. Stephens, City Attorney, and Herman Mohr, Deputy City Attorney, and J. L. Ronnow, deputy City Attorney, Attorneys for City of Los Angeles.

[fol. 230] Received copy of the within Motion on this — day of July, 1928, Attorney for plaintiff—Jess E. Stephens, City Attorney, Fourth Floor, City Hall, Los Angeles, California, Attorney for City of Los Angeles.

[File endorsement omitted.]

[fol. 231] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING INTERVENTION—Filed July 6, 1928

This matter coming on to be heard on the application of the City of Los Angeles to intervene and be made a party defendant in the above entitled cause and the stipulation of the attorneys for plaintiff and defendant in said cause consenting to said intervention, and it appearing to the court from the motion filed herein and the amended bill of complaint that the petitioner, City of Los Angeles, has an in-

terest in the subject of this suit sufficient to enable it to become a party defendant herein,

It is therefore ordered, adjudged and decreed that the City of Los Angeles, petitioner, have leave to intervene in said suit as a party defendant, this order to be without prejudice in any proceedings heretofore had in this cause, and without the right to apply for any continuance of the hearing on the order to show cause heretofore issued.

(Signed) Wm. P. James, Judge of the District Court of the United States in and for the Southern District of California, Southern Division.

[File endorsement omitted.]

[fol. 232] In United States District Court

[Title omitted]

Notice of Motion to Dismiss—Filed July 7, 1928

To the Los Angeles Railway Corporation, and Gibson, Dunn & Crutcher and S. M. Haskins, its Solicitors, and Woodward M. Taylor and Paul R. Watkins, of Counsel:

Sirs: You, and each of you, will please take notice that upon the bill of complaint herein, which was filed in the office of the Clerk of this Court on or about the 22nd day of June, 1928, and upon the amended bill of complaint herein, which was filed in the office of the said Clerk of this Court on or about the 28th day of June, 1928, the undersigned will move this Court on Thursday, July 12, 1928, before the Honorable William P. James, Judge thereof, and, if it be needful or proper, before such other Honorable Judges of this Court as may then and there sit with said Honorable William P. James to hear said motion, at the opening of Court on that day, or as soon thereafter as counsel can be heard, for an order dismissing said bill of complaint for want of equity, as well as for divers other good and sufficient reasons and grounds, and for such other and [fol. 233]further relief in the premises as may be just, together with costs incurred, which said grounds of relief are more fully and particularly set forth in the "Motion

to Dismiss" served and filed herewith and attached hereto.
Dated Los Angeles, California, July 7, 1928.
Carl I. Wheat, Reginald L. Vaughan, Roderick B. Cassidy, Solicitors for Defendant, State Building, San Francisco, California.

[fol. 234] Received copy of within Notice this 7th day of July, 1928, Gibson, Dunn & Crutcher, by Woodward M. Taylor, Solicitors for plaintiff—Carl I. Wheat, Reginald L. Vaughan, Roderick B. Cassidy, Solicitors for defendant, State Building, San Francisco, California.

[File endorsement omitted.]

[fol. 235] In United States District Court

[Title omitted]

Notice of Motion to Dismiss—Filed July 20, 1928

To the Los Angeles Railway Corporation and Gibson, Dunn & Crutcher and S. M. Haskins, its Solicitors, and Woodward M. Taylor and Paul R. Watkins of Counsel:

You and each of you will please take notice that upon the amended bill of complaint filed herein, the undersigned will move this Court, on Tuesday, July 24, 1928, before the Hon. William P. James, Judge thereof, and if needful or proper, before such other Honorable Judges of this Court as may then and there sit with said Hon. William P. James to hear said motion at the opening of Court on that day, or as soon thereafter as counsel can be heard, for an order dismissing said amended bill of complaint, for want of equity, as well as for diverse and other good and sufficient reasons and grounds, and for such other and further relief, in the premises as may be just, together with costs incurred, which said grounds of relief are more fully and particularly set forth in the motion to dismiss served and filed herewith and as a part hereof.

[fol. 236] Dated Los Angeles, California, July 18, 1928.

(Signed) Jess E. Stephens, Jess E. Stephens, City Attorney, Herman Mohr, Herman Mohr, Deputy City Attorney, Solicitors for the defendant City of Los Angeles, California, a municipal corporation, City Hall, Los Angeles, California.

[File endorsement omitted.]

Received copy of the within Notice of Motion to Dismiss this 19th day of July, 1928—Gibson, Dunn & Crutcher, Attorney for—Jess E. Stephens, City Attorney, Fourth Floor, City Hall, Los Angeles, California, attorney for City of L. A.—

[fol. 237] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed July 7, 1928

Now comes the Railroad Commission of the State of California, named as defendant herein, by and through its Attorneys and Solicitors hereto undersigned, and moves this Honorable Court to dismiss the bill of complaint herein upon each and all of the following grounds, to-wit:

I

Said bill of complaint is wholly without equity, as appears upon the face thereof, in the following particulars and for the following reasons:

(a) Said bill was not brought promptly and plaintiff has not acted diligently. Said bill was brought to restrain defendant from compelling the maintenance of a certain schedule of rates or fares for transportation by street car upon plaintiff's street car system in and about the City of Los Angeles, and to restrain defendant, and all other persons, from interfering with the charge and collection of a certain schedule of rates or fares higher than said schedule of rates or fares now charged and collected by plaintiff. Said bill of complaint purports to relate to a certain order of the California Railroad Commission numbered Decision [fol. 238] No. 19521 and dated March 26, 1928, but dis-

closes upon its face that no rate or rates or schedules of rates or charges or changes in rates were than or thereby fixed or established by said California Railroad Commission, and that said order related solely to and was a denial by the Commission of authority to plaintiff to place in effect a certain specific rate increase upon its system.

(b) Under the provisions of the Public Utilities Act of California, plaintiff was required to petition for a review of the order of the California Railroad Commission complained of within thirty (30) days after the denial of its application for a rehearing by said California Railroad Commission. This Court will adopt and apply the same period provided by the State Statute.

(c) Plaintiff has not exercised its remedy in the state courts of California by seeking a writ of certiorari or review from the Supreme Court of California to the California Railroad Commission.

(d) Plaintiff has not exercised its remedy under the laws of California by seeking the establishment by said California Railroad Commission of any rates or schedules of rates sufficient to bring to it the return to which it claims in its bill of complaint to be entitled under the Constitution of the United States, except the said particular and specific proposal as to which authority to place in effect was denied by the California Railroad Commission in its order No. 19521 dated March 26, 1928, above mentioned.

(e) It appears upon the face of said bill of complaint that it is premature.

(f) That said bill alleges that the operation and effect of the order of said Railroad Commission of March 26, 1928 if the same be permitted to stand and enforced, will [fol. 239] be to deprive plaintiff of the value and benefit of its property without compensation or without due process of law, and to deny to it the equal protection of the laws in violation of the provisions of the Constitution of the United States, but said bill discloses upon its face that the said order of the Railroad Commission of March 26, 1928, did not fix, establish or allow to be placed in effect any particular schedule of rates or fares upon the system of plaintiff.

(g) Said bill discloses upon its face that the service rendered by plaintiff is largely performed under certain contracts, franchises and permits of the City of Los Angeles, specifically providing that the rate of fare to be charged under said franchise or franchises shall not be more than five cents (5¢) for one continuous ride in the same general direction within the corporate limits of the city. But said bill discloses upon its face that the California Railroad Commission has not found that the rates and fares now desired by plaintiff are justified, and that the Railroad Commission has not acted by said order of March 26, 1928, to set aside, change, correct, amend or annul any fare provision included in any such contract or franchise.

(h) Said bill discloses upon its face that it is based upon the theory that the Railroad Commission, in making its said order, utilized an erroneous theory or method in arriving at its finding of value or rate-base for plaintiff's properties, but said bill also discloses upon its face that the Railroad Commission considered and gave due and proper weight to each and every element of value and theory of value to which consideration and weight are required to be given by law.

(i) It appears upon the face of said bill of complaint that complainant, in estimating the value of its properties and [fol. 240] in estimating the net revenues thereon, has erroneously based its said estimates and the said complaint upon a consideration of and inclusion of properties used in and for a service as to which no increase in rates or fares is asked or was asked of the Railroad Commission, and upon divers services and values not properly to be considered in judging or estimating its return or the fair value of the properties properly at issue herein, and which were not and are not properly within the scope of the issues of this proceeding.

(j) It appears upon the face of said bill of complaint that complainant has erroneously included in its allegations of value certain facilities and equipment not properly before the Railroad Commission nor within the scope of the order complained of, and not now within the scope of or the issues of this proceeding.

II

Said bill of complaint is without equity, and is ambiguous, unintelligible and uncertain in the following particulars:

(a) That it cannot be ascertained or determined therefrom what evidence was introduced before the Railroad Commission.

(b) No facts or allegations of fact are contained in said bill of complaint sufficient to support the conclusion that plaintiff's rights, or any of them, under the Constitution of the United States, have been in any manner infringed or violated by any act or acts or decision or decisions of the California Railroad Commission.

(c) No facts or allegations of facts are contained in said bill of complaint to support the conclusion that plaintiff's property, or any of the same, is being taken without compensation or without due process of law, or that plaintiff has been denied the equal or any protection of the laws by [fol. 241] the enforcement of any schedule or rates fixed Commission.
or established by order of the said California Railroad

(d) That in addition to the many and all other matters as to which said complaint is uncertain, ambiguous and unintelligible, said complaint is in particular uncertain, ambiguous and unintelligible because it cannot be ascertained therefrom what, if any, act of the California Railroad Commission fixing or establishing any rate or rates or schedule or schedules of rates for charge and collection upon the street railway system of plaintiff is complained of.

(e) That in addition to the many and all other matters as to which said complaint is uncertain, ambiguous and unintelligible, it is in particular uncertain, ambiguous and unintelligible because there is not set forth or alleged therein any act or acts or order or orders of the California Railroad Commission fixing or establishing the schedule of rates alleged to be the existing schedule of rates now in force for street railway transportation upon plaintiff's system, the enforcement of which is alleged to result in the taking of plaintiff's property, or some of it, without due

process of law and/or the denial to it of the equal, or any, protection of the law.

(f) That in addition to the many and all other matters as to which said bill of complaint is uncertain, ambiguous, and unintelligible, it is in particular uncertain, ambiguous and unintelligible because it cannot be ascertained therefrom how or in what manner said existing schedule of rates was fixed or established.

(g) That in addition to the many and all other respects as to which said bill of complaint is uncertain, ambiguous and unintelligible, it is particularly uncertain, ambiguous and unintelligible because it cannot be ascertained therefrom [fol. 242] what, if any, franchise provisions requiring the maintenance of a five-cent basic fare upon the portion of plaintiff's system thereby covered have been changed, amended, altered or rescinded as to said fare provision by public authority.

III

That it appears on the face of said bill of complaint that this Court has no jurisdiction to hear or determine this suit or action, for the following reasons:

(a) It does not appear upon the fact of said bill that the schedule of rates complained of therein is a schedule of rates fixed or established by the California Railroad Commission.

(b) It appears upon the face of said bill that the schedule of rates now in force upon its said system and complained of in said bill is a schedule of rates fixed and determined and kept in force upon said system by said complainant itself, in the face of an order of said California Railroad Commission dated May 31, 1921 (19 C. R. C. 980), by which said plaintiff was granted authority to place in effect an increase of rates over the five-cent basic fare then in force. It appears upon the face of said bill of complaint that plaintiff did not accept said increased fares authorized by said decision, but that after a period of over five years and on or about October 5, 1926, said order allowing said increased fares was set aside and revoked by said Railroad

Commission at the instance of, and upon the request and application of, the plaintiff.

(c) It appears upon the face of said bill that plaintiff, does not complain of any rates or schedules of rates fixed or established by the California Railroad Commission or presently in force upon its system as a whole, but that on the contrary it complains of but a portion of the rates in force upon its said system.

[fol. 243] (d) It appears upon the face of said bill that many of the rates contained in the schedule of rates now in force over plaintiff's system are not desired to be increased by plaintiff, but that this Court is being asked herein and hereby to create a new, changed, rearranged or different schedule of rates upon its system than is now presently in force, with new and different discriminations or differentials as between plaintiff's respective patrons.

(e) It appears upon the face of said bill of complaint that it is not based upon said order of the Railroad Commission of March 26, 1928.

(f) It appears upon the face of said bill of complaint that plaintiff operates its street railway system under certain franchises from the City of Los Angeles which contain fare provisions which this Court has no jurisdiction to change, alter, amend or set aside.

IV

It appears upon the face of said bill of complaint that this Court has no jurisdiction over the subject matter of this suit or action, for the following reasons:

(a) This Court has no jurisdiction, by order, decree or injunction, or otherwise, to declare null and void any order or orders of the Railroad Commission of the State of California, other than upon the single ground that the operation of said order or orders will or would result in the confiscation of property used or useful in the service for which the rates complained of are charged or collected, and such property only, in violation of the provisions of the Constitution of the United States.

[fol. 244] (b) This Court has no jurisdiction, by order, decree or injunction, or otherwise, to fix or establish any rate or schedule of rates or fares to be charged or collected by plaintiff from its patrons, or any of them.

(c) This Court has no jurisdiction, by order, decree, injunction, or otherwise, to revise the schedule of rates charged and collected by plaintiff from its patrons.

(d) This Court has no jurisdiction, by order, decree, injunction, or otherwise, to prescribe any rate or rates or schedules of rates other than or different from that lawfully charged and collected by plaintiff from its patrons under the Constitution and Laws of the State of California.

(e) This Court has no jurisdiction, by order, decree, injunction or otherwise, to grant authority to plaintiff to charge or collect from its patrons, or any of them, any rate or rates, or schedule of rates or fares not authorized by or under the Constitution and laws of the State of California.

(f) This Court has no jurisdiction, by order, decree, injunction or otherwise, to condemn a schedule of rates in part only.

(g) This Court has no jurisdiction, by order, decree, injunction or otherwise, to change, alter or rearrange a schedule of rates, or to prepare or authorize a new or different schedule of rates or fares to be charged or collected by plaintiff from its patrons, or any of them.

(h) This Court has no jurisdiction, by order, decree, injunction, or otherwise, to grant authority to plaintiff to rearrange its schedule of rates or fares either as a whole or in part, or to charge or to collect from its patrons, or any of them, any new, changed, rearranged or different schedule of rates or fares.

[fol. 245] (i) This Court has no jurisdiction, by order, decree, injunction, or otherwise, to create, fix, prescribe or allow any new or different spread of rates upon plaintiff's system, or to create, fix, prescribe or allow any new or different discrimination or discriminations or differential or differentials as between plaintiff's respective patrons or any of them.

(j) This Court has no jurisdiction, by order, decree, injunction, or otherwise, to grant authority to plaintiff to create any new or different spread of rates upon plaintiff's system, or to create any new or different discriminations or differentials in rates or fares as between plaintiff's respective patrons, or any of them.

(k) This Court has no jurisdiction, by order, decree, injunction or otherwise, to grant authority to plaintiff to charge or collect from its patrons or any of them, any specific rate or rates, fare or fares, either as set forth in the prayer of said bill of complaint or otherwise.

(l) This Court has no jurisdiction, by order, decree, injunction or otherwise to authorize or allow plaintiff to charge or collect or place in force upon its system any rates or fares different from or higher than the rates or fares provided to be charged or collected upon said system, or any part thereof, in and by the franchise or franchises by reason of and under authority of which plaintiff operates its street cars or any of them, over, along or upon the streets of the City of Los Angeles, or any of them, or of any other city or county.

V

Said bill of complaint does not state facts sufficient to constitute a cause of action at law or in equity.

[fol. 246]

VI

Said bill of complaint does not state facts sufficient to constitute a cause of action at law or in equity in favor of plaintiff, Los Angeles Railway Corporation.

VII

Said bill of complaint does not state facts sufficient to constitute a cause of action in equity for a restraining order or for an injunction as prayed in said bill of complaint, or for any other equitable or other relief.

VIII

Said bill of complaint does not comply with rule 25 of the Federal Equity Rules, and particularly paragraphs second and third of said rule.

IX

Said bill of complaint consists in large part of allegations and statements of evidence in violation of paragraph third of rule 25 of the Federal Equity Rules.

X

Said bill of complaint is based upon the wholly errroneous theory that this Court is a court for the trial de novo of the matters contained in said complaint.

XI

Said bill of complaint contains much redundant and impertinent matter which should, in all equity and good conscience, be stricken from the same, as provided in and by Federal Equity Rule 21.

XII

The bill of complaint discloses upon its face that it is an attempt to raise public utility rates by injunction.

[fol. 247] Wherefore, for the reasons above set forth and for other good reasons of objection appearing upon the face of said complaint, the said defendant does hereby pray and petition that this Honorable Court make its order dismissing the bill of complaint and the amended bill of complaint on file in the above-entitled cause, without leave to amend, and that said defendant recover its costs herein incurred, and that this Honorable Court make, decree and adjudge to said defendant such other and further relief as may to it appear meet and proper in the premises.

Dated at Los Angeles, California, this 7th day of July, 1928.

Carl I. Wheat, Reginald L. Vaughan, Roderick B. Cassidy, Solicitors for Defendant, State Bldg., San Francisco, California.

[fol. 248] Received copy of the within Motion this 7th day of July, 1928, Gibson, Dunn & Crutcher, by Woodward M. Taylor, Solicitors for plaintiff; Carl I. Wheat, Reginald L. Vaughan, Roderick B. Cassidy, Solicitors for defendant, State Building, San Francisco, California.

[File endorsement omitted.]

[fol. 249] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed July 20, 1928

Now comes the defendant City of Los Angeles, of the State of California, heretofore by order of this Court permitted to intervene as a party-defendant in this action, and on the records, pleadings and files in said cause moves the Court to dismiss the Bill of Complaint and the Amended Bill of Complaint filed herein, upon the following grounds, to-wit:

1. That it appears on the face of the Amended Bill of Complaint by plaintiff's own showing that it is not entitled to the relief prayed for by its Amended Bill of Complaint;

2. That it appears on the face of said Amended Bill of Complaint that said Amended Bill of Complaint is wholly without equity;

3. That it appears on the face of said amended Bill of Complaint that this Court has no jurisdiction to hear and determine this suit;

4. That it appears on the face of said Amended Bill of Complaint that this Court has no jurisdiction of the subject matter of this suit;

[fol. 250] 5. That it appears on the face of said Amended Bill of Complaint that the same is uncertain in each of the following respects;

(a) That it cannot be ascertained from the facts alleged in said Amended Bill of Complaint, what, if any, act has been done by the State of California, and/or any political subdivision thereof, and/or any of their officials, which has caused the property of the plaintiff to be confiscated;

(b) That it cannot be ascertained from the facts alleged in the said Amended Bill of Complaint what constitutional provision, and/or statute, and/or legislative enactment, and/or municipal ordinance, and/or franchise, and/or contract, is attacked by plaintiff on the ground that the rates therein fixed are confiscatory of plaintiff's property;

(c) That it appears affirmatively from the Amended Bill of Complaint that the order of the State Railroad Commission attacked does not contain any provision fixing rates of fare, and it cannot be ascertained from the facts alleged in said Amended Bill of Complaint how, or in what manner, this order is confiscatory of the plaintiff's property;

(d) That it cannot be ascertained from the Amended Bill of Complaint what, if any, real substantial federal question is involved.

Wherefore, for the reasons above set forth and for other good and sufficient reasons of objection appearing upon the face of said Amended Bill of Complaint, the defendant City of Los Angeles does hereby pray and petition that this Honorable Court make its order dismissing the Bill of Complaint and the Amended Bill of Complaint on file in the above entitled cause, without leave to amend, and that said defendant recover its costs herein incurred, and that [fol. 251] this Honorable Court make, decree and adjudge to said defendant such other and further relief as may to it appear meet and proper in the premises.

Dated at Los Angeles, California, this 19th day of July, 1928.

Jess E. Stephens, City Attorney, Herman Mohr, Deputy City Attorney, James L. Ronnow, Deputy City Attorney, Solicitors for defendant, City of Los Angeles, City Hall, Los Angeles, California.

Authorities

Columbus Ry. Power & Light Co. v. City of Columbus, 253 Fed. 299 U. S. 399, 63 L. ed. 699;

No. Am. Const. Co. v. Des Moines City Ry. Co. 256 Fed. 107;

C. & E. Sec. Co. v. Manhattan etc. Corp. 253 Fed. 453;

St. Cloud P. S. Co. v. St. Cloud, 265 U. S. 352; 63 L. Ed. 669; 68 L. ed. 1050;

Henderson W. Co. v. Corporation Comm. of No. Carolina, 269 U. S. 278; 7 L. ed. 273;

City of Opelika v. Opelika Sewer Co. 265 U. S. 215 68 L. ed. 985;

Burr v. City of Columbus (1924) 256 Fed. 261 (Affirmed 249 U. S. 415; 63 L. Ed. 679)

Pac. Tel. & Tel. Co. v. Whitcomb, 12 Fed. (2nd) 279, at 287;

Ottumwa Ry. & Light Co. v. City of Ottumwa (Ia.) 173 N. W. 270;

City of Albany v. U. S. Fidelity & Guaranty Co. 38 Cal. App. 466;

City of San Diego v. Kerckhoff, 49 Cal. App. 473;

Southern Pac. Co. v. Spring Valley Water Co. 173 Cal. 291, at 293;

Henrici v. Southern Feather Land, etc., Co. 177 Cal. 442 at 448.

[fol. 252] Received copy of the within Motion to Dismiss this 19th day of July, 1928.

Gibson, Dunn & Crutcher, Attorneys for —— ——.
Jess E. Stephens, City Attorney, Fourth Floor, City Hall, Los Angeles, California, Attorney for City of Los Angeles.

[File endorsement omitted.]

[fol. 253] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF RAILROAD COMMISSION—Filed July 24, 1928

Answering the amended bill of complaint herein, the defendant, Railroad Commission of the State of California, respectfully admits, denied and alleges as follows:

I

Admits the allegations contained in Paragraph I of said amended bill of complaint save and except that defendant denies that plaintiff street railway and motor bus line are, or constitute a unified transportation system for rate making purposes, or otherwise; and denies that the majority of plaintiff's franchises by reason of which plaintiff's electric lines occupy public streets, contain the provisions stated on page 2 of said amended bill of complaint, lines 13 to 17 inclusive. Defendant admits that the matter quoted from a

certain decision of the Railroad Commission contained in said bill from line 28, page 3, to line 19, page 4 thereof, is contained in said decision insofar as H. E. Huntington is concerned, but denies that said matter is true and cor-
[fol. 254] rect save as to and as of the date when said decision was rendered, to-wit, March 3, 1915.

II

Admits the allegations contained in Paragraph II of said amended bill of complaint.

III

With reference to the matters alleged in Paragraph III of said amended bill of complaint defendant denies that the present rates of fare now in force upon plaintiff's transportation system are either unjust, unreasonable, non-compensatory or confiscatory, but alleges that the said rates of fare are just, fair, reasonable, compensatory, non-confiscatory and proper rates of fare for and upon said system and for and in consideration of the service rendered by plaintiff; defendant also denies that the decision and order of defendant dated March 26, 1928 (Decision 19521) in Application No. 13323 before defendant) is confiscatory; or that it results in confiscation; or that it was arbitrarily made or entered; or that it was unlawfully made or entered; or that it takes the property of plaintiff, or any of it, without just compensation, or otherwise, or that it deprives plaintiff of its property, or any of it, either without due process of law, or otherwise; or that it denies to plaintiff the equal or any protection of the law; or that it in any manner whatsoever is contrary to, or in violation of either the Fifth or the Fourteenth Amendments to the Constitution of the United States, or to any other clause, section, phrase, expression, word or provision of said Constitution; and denies that either the further facts, circumstances, or conditions alleged in said amended bill of complaint, or any of the said facts, circumstances or conditions therein con-
[fol. 255] tained averred or set forth, or any other facts, circumstances or conditions whatsoever, justify or necessitate the exercise of the jurisdiction or any jurisdiction of this court, either to afford the relief therein prayed by plaintiff or otherwise.

IV

Answering the allegations contained in Paragraph IV of said amended bill of complaint, defendant admits that the increase in fares allowed to plaintiff in and by defendant's Decision No. 9029 was not accepted by plaintiff, but denies that said authority contained in said decision was not accepted by plaintiff for the reasons stated in said Paragraph IV of said amended bill of complaint, or any of them, and defendant denies the allegations of purported fact contained in said alleged reasons. And in this connection defendant alleges that said authority contained in said decision was not accepted or placed in effect by plaintiff because of reasons entirely distinct and contrary to those set forth in said Paragraph IV of the amended bill of complaint herein; and defendant alleges that among those reasons was the fact that at the time in question plaintiff was earning a greater return upon the fair value of the properties devoted by it to the public service than was or is reasonable or fair.

V

Answering the allegations contained in Paragraph V of said amended bill of complaint, defendant denies that either by reason of the facts or circumstances alleged in said paragraph, or alleged in other portions of said amended bill of complaint, or by reason of any other facts or circumstances, the present rates of fare in force and effect upon the street railway system of said plaintiff are now, or have at any time been, or have become, or will be, [fol. 256] or become in the future at any time, either unjust or unreasonable, inadequate, insufficient, non-confiscatory or confiscatory of the property used or useful by plaintiff either in the transportation of passengers over its street railway system or otherwise, or any of such or any other property of plaintiff; and denies that the said present rates of fare are now or have at any time been, or have become, or will be, or become at any time, insufficient to yield a reasonable compensation for the service rendered by plaintiff; and denies that the said rates of fare have been, or are now, or will be, or continue to be, insufficient, or inadequate to provide a fair return upon the fair and

reasonable value of the property actually used by plaintiff in the operation of its street railway system or devoted to said public service; and denies that the said present rates of fare have deprived, or do now deprive, or will, or will continue to deprive plaintiff of a fair and reasonable return upon the fair and reasonable value of its property devoted to public use or service, either contrary to the Constitution of the United States or any part or portion thereof, either as alleged in said paragraph or portion of said amended bill of complaint, or otherwise.

VI

Defendant has no information or belief sufficient to enable it to answer the allegations contained in Paragraph VI of the amended bill of complaint, and for that reason defendant denies the said allegations and each and every — of the said allegations; and defendant alleges that by reason of the very great amount of evidentiary matter included and contained in said Paragraph VI, it is not possible nor [fol. 257] practicable and defendant is unable to answer the said allegations either categorically or otherwise, and that while it has reason to believe said allegations to be, in the main, true and correct, it cannot, from facts or figures at its disposal, ascertain their correctness either as of the specific dates mentioned in said paragraph or otherwise, and therefore cannot admit their accuracy.

VII

Defendant has no information or belief sufficient to enable it to answer the matters and things contained in Sections a, b and c of Paragraph VII of the said amended bill of complaint, and basing its denial upon that ground it denies the said allegations. It further denies that the tables contained in the said paragraph are true or correct, or that the estimate contained therein is either as accurate as it is now possible to make it, or as it will ever be possible to make it; and denies that the tables Nos. 1, 2, 3, 4, 5 or 7, or any of them, stand either refuted or uncontradicted or unquestioned in the record before defendant in the proceeding before it (Application No. 13323).

VIII

Defendant has no information or belief sufficient to enable it to answer the allegations contained in Paragraph VIII of said amended bill of complaint, and basing its denial upon that ground, denies the said allegation and each and every allegation so set forth and contained; and denies that the estimate contained in said paragraph is either true or correct, or that the items set forth therein, or any of them, are either necessary or essential to the proper development [fol. 258] of growth of plaintiff's system or to the continued or any rendition by plaintiff of either said adequate or efficient transportation service; and denies that the said estimate so contained in said paragraph of said amended bill of complaint was or stands or is unrefuted uncontradicted or unquestioned in the record before defendant in the proceeding before it (Application No. 13323), either as to the accuracy, propriety or necessity of any or all of the items therein contained; and defendant denies that if compelled to keep in effect or charge or collect its present basic fare of five cents plaintiff will be unable either by reason of inadequate or insufficient earnings, or otherwise, to carry out its alleged program of additions, betterments, and/or renewals, or that as a consequence thereof, or otherwise, plaintiff will be unable to continue to render both safe, adequate and efficient transportation service or safe, adequate or efficient transportation service, or that the development or service requirements of plaintiff's system will in any sense either inevitably, or otherwise, be curtailed or need to be curtailed either below the point necessitated or demanded by its patrons or below the point at which plaintiff is willing or desirous or anxious to keep it, or otherwise.

IX

In reference to the allegations contained in Paragraph IX of said amended bill of complaint defendant denies that the joint report mentioned therein was in any sense either an agreed report or an agreed joint report as therein alleged, but defendant alleges that the said report was neither an agreed report nor an agreed joint report, and further alleges that the said report, for what it may be worth is but

[fol. 259] mere evidence in the present action and that defendant cannot, nor should it in good conscience be required to answer categorically each and every allegation regarding said joint report contained in said paragraph of said amended bill of complaint; defendant denies that the actual present or any other fair value of plaintiff's properties devoted to the public use either upon the bases of the figures or under the methods alleged by plaintiff to have been agreed upon in said joint report, or otherwise, is substantially, or any greater than the sums therein shown, either when all proper questions are taken into effect or otherwise, or that it is the sum of $47,000,000 or any other sum in excess of $42,000,000; and defendant alleges that the very allegation that the figures contained in the said report do not accurately set forth the value of plaintiff's properties devoted to the public use discloses that the said report was not an agreed report or an agreed joint report; and defendant further alleges that the allegations contained in lines 31 and 32 of page 26 and lines 1 and 2 of page 27 of said amended bill of complaint to the effect that plaintiff submits the figures, summaries and computations of said joint report "without prejudice, and with reservation of right to prove the full and actual present fair value of its said properties upon the trial of this action" discloses that the said alleged joint report and the said figures, computations and summaries contained therein are not, even under plaintiff's allegations or theories, properly within this proceeding; and defendant further alleges that the inclusion of said evidentiary matter renders this paragraph of the said amended bill of complaint impracticable and impossible to answer categorically; and that it is without equity to require such answer. Defendant is further without information or belief sufficient to enable it to answer the allegations [fol. 260] contained in that portion of said Paragraph IX of said amended bill of complaint beginning at line 3, page 27 thereof and continuing throughout said page and through pages 27a and 28 thereof, and basing its answer upon said ground denies the matters therein so alleged. And defendant denies that all or any parties are in agreement that reproduction cost new less depreciation is not applicable in ascertaining a rate base for plaintiff's properties.

With reference to the allegation contained in the portion of said Paragraph IX of said amended bill of complaint included on page 29, lines 1 to 7 of said amended bill of complaint, defendant denies that either the actual, or present or minimum fair value, or any other value, of plaintiff's properties devoted to the public use, is the sum of $47,000,000 or in excess thereof, either when all proper or lawful elements of value or any of the same are taken into account, or otherwise; and defendant alleges that the actual present and minimum fair value of plaintiff's properties devoted to the public service and properly cognizable in the present proceeding is the sum of $42,000,000 and no more; and defendant further alleges that the statement that plaintiff submits the alleged valuation figures contained in Table No. 11 on page 28 of said amended bill of complaint "without prejudice, and with reservation of right to prove the full and actual present fair value of its said properties upon the trial of this action" discloses that the said allegations of value are not the allegations of value upon which this plaintiff proposes or desires to stand in the present proceeding, and that it is without equity or good conscience to require a defendant to answer any such allegations.

[fol. 261] Defendant denies that a return of not less than eight per cent. per annum upon the fair value of the property used by plaintiff in the public service is a fair and reasonable return or is the rate of return expected or usually realized in the locality where such property is located, either with due regard to the risks attending them, or any of them, or under rates or charges that are either in or of themselves reasonable or commensurate with the value of the service rendered, or otherwise; and in this connection defendant alleges that a reasonable and fair rate of return upon the fair value of the property devoted by the plaintiff to the public service here in question is the sum of six and one-half per cent. per annum upon said value.

Defendant is without information or belief sufficient to enable it to answer the allegations contained in those portions of Paragraph X of said amended bill of complaint comprised within lines 16 to 29 inclusive of page 29 thereof, and basing its answer upon that ground denies the said allegations.

Defendant also denies that the return received by plaintiff either from the present rates of fare charged or collected by it upon its said transportation system, or otherwise, has not been, or is not now sufficient either to maintain or support the credit of plaintiff, or to enable it to support capital funds whether for the purpose of providing for new construction or equipment or otherwise. Defendant is without information or belief sufficient to enable it to answer the allegations contained in the said paragraph of said amended bill of complaint within lines 2 to 14 inclusive, of page 30 thereof, and basing its denial upon that ground denies the said allegations. Defendant further denies that plaintiff's actual net or other income available [fol. 262] for return either for the years 1926 or 1927, or any other years, is or was equivalent to a return of eight per cent. on approximately $16,800,000, or any other sum within defendant's knowledge, information or belief, and defendant further states that it has no information or belief sufficient to answer the matters contained on lines 17 to 20 inclusive of page 30 of said amended bill of complaint and therefore denies the said allegations.

XI

Defendant admits the filing with it of Application No. 13323, as alleged in Paragraph XI of the said bill of complaint, but denies that said application was filed because plaintiff was confronted with such or any daily or other continuing or drastic or other confiscation of its property, either under the basic five-cent fare or otherwise. Defendant admits that the matters contained in said bill of complaint between line 31, page 30 and line 26, page 31, include in brief a statement of certain portions of said application, but alleges that since the said application No. 13323 is included in said bill of complaint as "Exhibit A" thereof, the said application speaks for itself, and the said brief allegation of its contents therefore require no denial at this time. However, answering the matters contained on page 32, lines 4-7 inclusive, of said bill of complaint, defendant denies that the allegations set forth in said application either were or are or at any time have been or are now true or correct, or that the said allegations or any

of them stand in the record before the Railroad Commission either uncontradicted, unrefuted, unquestioned or otherwise.

[fol. 263]

XII

Defendant admits the filing with it of a verified supplemental application for interim rates, as alleged in Paragraph XII of the bill of complaint herein, but denies that the said verified supplemental application was filed because plaintiff was faced still or at any time with said or any daily or other continuing or other confiscation of any sort of its properties or any of them either under the basic five-cent fare or otherwise. Answering the matters contained in lines 1 and 2 on page 33 of said bill of complaint, defendant alleges that the facts as to the allegations of said verified supplemental application speak for themselves, and insofar as they are quoted in said amended bill of complaint are admitted to be allegations so made and filed.

Defendant has no information or belief sufficient to enable it to answer the allegations contained in the portion of said bill of complaint included within lines 17-23 inclusive on page 36 thereof, and basing its denial thereon, denies the said allegations and each and every thereof, and further denies that either said or any emergency did or does now exist, or that the existence of either said or any other emergency was established either before the Commission or before any other body or tribunal either at the various hearings held by said Commission, or otherwise, or either by evidence or otherwise, or that any of said evidence was uncontradicted or unrefuted or unquestioned, or that in any sense or at any time in any part or portion of said proceeding, the said purported facts, or any of them, were proved either by the overwhelming or any other preponderance of the evidence or otherwise.

[fol. 264]

XIII

Defendant admits the making and entering of its decision No. 18531, as alleged in paragraph 13 of the said amended bill of complaint, but denies that the said decision and order was made or entered notwithstanding all or any of the matters, facts or things, or any of them, either alleged in plaintiff's verified supplemental application for interim rates or otherwise, or notwithstanding the mass or any of

the documentary or other data either then before the Commission concerning all or any of the plaintiff's corporate or financial or other operating affairs or valuations or otherwise. Defendant denies that in and by its decision and order No. 19521, it either failed, refused or neglected to determine either the major issues of the proceeding or any issues therein, or that it failed or neglected or refused either to find or determine a proper rate of return or a proper allowance for operating expenses or depreciation or the present or any fair value of plaintiff's properties devoted to the public use, or any of the same.

XIV

Answering the allegations contained in Paragraph XIV of the said amended bill of complaint, defendant denies that either findings of fact one or four of its decision No. 19521, mentioned herein, or any other of the findings of fact contained in the said decision is or are contrary to the evidence or are without support in the record; and defendant denies that the said findings of fact or any of them are in disregard of the evidence or any of it, or are based solely upon estimates introduced in evidence before the Commission by the Commission's engineers in Exhibits 52 and 64 in the record before the Commission, or otherwise, or that the said [fol. 265] estimates so contained either were or are either arbitrary, inaccurate, erroneous or unlawful either in the particulars mentioned in items one and two on lines 28 to 32 on page 38 and lines one to four on page 39, or otherwise. Defendant further denies that either for these reasons or for any other reasons, the said estimates of the Commission's engineers either were or are not lawful or that they do not constitute any evidence as to the then or present fair value of plaintiff's used or useful properties in the public service or any of them; and denies that the said findings of fact or any of the same in said decision and order No. 19521 are based on arbitrary or unlawful estimates or that the same are contrary to the evidence or any of it, or are without support in the record before the Commission.

XV

Defendant admits the allegations contained in Paragraph XV of said bill of complaint.

XVI

Defendant admits the allegations contained in Paragraph XVI of said bill of complaint, and alleges that the order denying rehearing mentioned therein disclosed upon its face that the finding- of defendant as to value in its Decision 19531 are fair, proper, just and liberal.

XVII

Answering the allegations contained in Paragraph XVII of the said bill of complaint, defendant denies that the rates of fare requested by plaintiff to be authorized by the Commission in its said Application No. 13323 are just or reasonable rates either from the standpoint of the traveling [fol. 266] public or otherwise, and denies that the said rates of fare so requested by plaintiff are no more than sufficient to give plaintiff either a fair or reasonable return upon the fair or reasonable value of its properties used and useful in the public service; and defendant denies that plaintiff's properties are modern; and denies that the said properties, either including the tracks, roadbed or equipment, or any of them, are in first-class or other good or efficient operable condition; and denies that the said properties of plaintiff, or any of them, compare favorably with any other street railway in the state or nation; and further denies that the service rendered by plaintiff to the public is either as good as or better than that of any other street railway in the state, and in this connection, defendant alleges that the said service is not as good as, but is perceptibly inferior to the service rendered by many other street railways in this State. Defendant further denies that plaintiff either has acquired or is acquiring or is installing or has installed new equipment as fast as the same has become necessary, or as fast as the same could be obtained, or to the full extent of its ability to meet the cost thereof. In this connection, defendant alleges that much of the equipment acquired or installed upon its system by plaintiff is not efficient or proper equipment for the service for which it was calculated to be used; but is obsolete, inadequate, improper and inefficient in many respects; and defendant denies that plaintiff is either constantly endeavoring to economize or is economizing in its operating costs, or methods, or in any other manner, whether practical or not, and defendant

denies that plaintiff is economizing or endeavoring to economize either to that degree which is consistent with good management or otherwise, or to the or any degree that will [fol. 267] enable it to meet the demands of growth, population or changing conditions, or otherwise, or of furnishing either a safe, adequate or efficient transportation service, either under the conditions peculiar to the city of Los Angeles and its environs or otherwise. And in this connection defendant alleges that plaintiff's equipment is to a large degree obsolete and inadequate; that it operates a narrow-gauge street railway system; that in many respects plaintiff's service is inadequate, inefficient, improper and unsatisfactory, and that the value of said service is not worth more than plaintiff receives under its present established rates of fare therefor.

XVIII

Answering the allegations contained in paragraph XVIII of said amended bill of complaint, defendant denies that either by reason of the facts or circumstances or any of the same stated in said complaint, or otherwise, plaintiff's property or any of the same, either under the rates of fare now being charged or collected, or otherwise, has either for the years 1926 or 1927 or for any other year been confiscated, either in the minimum aggregate amount of $4,700,000.00, or in any other amount whatsoever; and denies that the said property, or any of the same, is now being confiscated, or has at any time been confiscated or taken, either at the continuing rate of not less than $7,000.00 per day or at any other rate or amount. Defendant further denies that the Commission has either failed or refused to grant to plaintiff any relief to which it has been or is now entitled under the law, and denies that unless relief is granted by this Court, plaintiff's property will be, or will continue to be, confiscated, either in a constantly increasing daily [fol. 268] amount or otherwise. Defendant further denies that the rates of fare set forth in Exhibit "G" attached to the complaint herein are either just or reasonable, or that they are no more than adequate or compensatory, or that they would not, if charged or collected, bring a return upon the fair and reasonable value of plaintiff's property devoted to the public service of more than 8%, and in this connection defendant alleges that the said rates, if allowed

to be charged and collected, would bring to plaintiff a return much in excess of 8% upon the value of said property, and that they would be and constitute unfair and unreasonable rates and fares. Defendant denies that any acute or other kind of emergency confronts plaintiff, or that the allowance of said proposed rates would remove any such emergency, and defendant denies that there exists any confiscation of the property of plaintiff under its present rates, and therefore denies that any such alleged confiscation will or would be avoided by the allowance of said proposed rates.

XIX

With reference to the matters and allegations contained in Paragraph XIX of said Bill of Complaint, defendant denies that plaintiff has no plain, speedy or adequate remedy at law, or that it is without adequate remedy, either from the alleged confiscation of its property or otherwise under its existing rates, which defendant denies to be confiscatory; and defendant denies that any injury or confiscation exists, or that any injury alleged in said Bill of Complaint is irreparable, either except for the intervention of a Federal Court of Equity, or otherwise. And defendant denies that [fol. 269] a or any multiplicity of suits would or will result from the denial of the relief prayed for by plaintiff.

XX

In answer to the allegations contained in Paragraph XX of said Bill of Complaint, defendant denies that the present existing rates of plaintiff are confiscatory, and on that ground alleges that the said present existing rates are the just, reasonable and compensatory rates to be charged by plaintiff for the services rendered by it. Defendant denies that the rates and fares set forth in Exhibit "G" of said complaint are just or reasonable or compensatory, but alleges that the said proposed rates are unjust, unreasonable and unduly great and excessive, and defendant denies that unless it is restrained or enjoined by this Court, said plaintiff will be forced to submit to any confiscation of its properties whatsoever, either without just compensation or otherwise, or without due process or without the equal protection of the law, or in any manner in violation of any of

plaintiff's rights whatsoever under the Constitution of the United States.

XXI

Answering the matters contained in Paragraph XXI of the said Bill of Complaint, defendant re-alleges herein each and every of the matters in its denials and allegations stated and set out in Paragraphs numbered I to XX, inclusive, of this Answer with the same force and effect as if the same were herein again repeated and set out.

[fol. 270] XXII

Answering the allegations contained in paragraph XXII of said Bill of Complaint, defendant denies that Decision and Order No. 19521 of the Commission is, either as in said complaint alleged or purported to be shown, or otherwise, either arbitrary, confiscatory, or void, either in the particulars alleged in sections 1, 2, 3, 4, 5 and 6 of paragraph XXII of said Bill of Complaint, or any of them, or in any other manner whatsoever. And in this connection defendant denies that the enforcement of the said decision and order either is, or will be or continue to be, confiscatory of plaintiff's property, or any of it; and denies that the enforcement of said decision and order either has or does now, or will, deprive or continue to deprive plaintiff or its property, or any of it, either without just compensation or without due process of law, or otherwise; and denies that the enforcement of said decision and order either has denied, does now deny, or will continue to deny to plaintiff the equal, or any, protection of the law, or that the said enforcement of said order will in any manner violate plaintiff's rights, or any of them, under the Constitution of the United States.

Defendant further denies that said decision and order is in any sense arbitrary, or is in any sense contrary to the evidence, or is in any sense without support in the record before the Railroad Commission. But defendant alleges that the said decision and order is not arbitrary, that it conforms to the evidence before the Railroad Commission, and that it is fully supported in all of its elements in the record adduced before the Railroad Commission. Defendant denies that said decision or order deprives plaintiff of a fair, or reasonable, or compensatory or any other return

[fol. 271] upon the fair value of its property used and useful in the public service, but alleges that under the present rates in force upon plaintiff's system, as continued in force by said decision, plaintiff will receive a fair, reasonable and compensatory return upon the fair value of its property used and useful in the public service, and all of the same. Defendant denies that said decision or order fails to find or establish the fair value of plaintiff's property used and useful in the public service, but alleges that defendant specifically made and found and included in said decision and order a fair, proper and complete finding of the fair value of plaintiff's property so used and useful in the public service, and all of the same. Defendant denies that said decision or order fails to allow plaintiff any or all necessary or reasonable operating expenses either for the service now given or necessary in the future to be given by plaintiff; and defendant alleges that said decision and order grants, allows and continues to plaintiff complete allowances for all fair, necessary and reasonable operating expenses, both for the services now rendered by it or necessary to be rendered by it in the future. Defendant admits that said decision and order does not establish or authorize plaintiff to put into effect any rates or fares different from or greater than the rates and fares now in force upon plaintiff's system, but denies that said order fails to establish or authorize plaintiff to either put into effect or to charge or collect just, fair and reasonable rates; and defendant alleges that the rates now in effect upon plaintiff's system will, and do, enable plaintiff to earn the reasonable cost of its service, including adequate and reasonable operating expenses, together with a full and proper allowance for depreciation and the taxes paid, or to be paid by plaintiff, [fol. 272] together with a full and fair return upon the fair and reasonable value of plaintiff's property used and useful in the public service.

XXIII

Answering the allegations contained in paragraph XXIII of said Bill of Complaint, defendant denies that said decision and order No. 19521 is either arbitrary or confiscatory or void, either in or because of finding number one mentioned and quoted in said paragraph of said bill of com-

plaint at lines 10 to 12, both inclusive, of page 46 thereof, or otherwise. And defendant denies that said finding is either arbitrary or confiscatory or contrary to the evidence adduced before the Railroad Commission, or that the said finding is without support in the record before the Commission, or that the said finding or said rate base of $42,000,000 is either confiscatory or erroneous or grossly or otherwise inadequate, or in excessive or any other sort of diminution of the fair and reasonable value of plaintiff's property used and useful in the public service. Plaintiff denies that said rate base of $42,000,000 is based or predicated upon, or that the Commission utilized, followed, pursued or acted upon any erroneous theory, or upon the theory that the controlling element in the valuation of the plaintiff's property is its historical reproduction cost, either without any allowance for working capital or going value or development cost, or otherwise, and denies that said rate base was found upon any other than the true and proper and lawful theory for the valuation of plaintiff's property for rate-making purposes, or that the said finding is in any respect other than the fair and reasonable value of all of [fol. 273] plaintiff's property devoted to the public use at the time of the inquiry in question.

Defendant further denies that the Commission has or did discard or disregard either the purported evidence alleged and set forth in lines 27 to 32, inclusive, on page 46, and lines 1 to 21, inclusive on page 47, of said bill of complaint, or any of the same; and defendant further denies that the said figure of $42,000,000 is, or that the record shows, or that it is otherwise, in any sense or regard, shown to be either the rounded-off historical reproduction cost figure as of December 31, 1926, contained in the purported estimate included in lines 1 to 10, inclusive, on page 48 of said bill of complaint, or otherwise, or is in any sense other than a figure representing the full, true, complete and lawful fair value of the property, and all of the same, devoted to the public service by said plaintiff at the time of the inquiry in question.

Defendant further denies that there was or is no evidence in the record before the Commission to support the said finding other than the figures shown in said purported table included in lines 1 to 10, inclusive of page 48 of said

bill of complaint, but defendant alleges that the said finding is supported by the evidence before the Railroad Commission in said matter, and that it is a finding made upon said evidence before it, and defendant therefore alleges that the said finding is based upon evidence properly adduced before it, which supports, in every and all proper and lawful manner, the said finding here in question.

And defendant, further answering the specific allegations of paragraph XXIII of said bill of complaint, denies that the figures contained in Table No. 12 as set forth in lines 1 to 10, inclusive, of page 48 of said bill of complaint, are [fol. 274] either arbitrary or erroneous or incorrect or unlawful, or that they are not any or other evidence of the then or present or other fair value of plaintiff's operative property either in that said figures did not or do not take into account or make any other allowance for working capital or going concern or development cost or franchise value or the so-called unagreed items referred to in the abovementioned joint report, or otherwise. And in this connection defendant alleges that the said figures are not arbitrary, that they are not erroneous, that they are correct and that they are lawful; that they were and are, in addition, proper and -awful evidence of the then and present fair value of plaintiff's operative property. And defendant denies that in said figures certain, or any, of plaintiff's overhead allowances either were or are arbitrarily, or otherwise, reduced either over one million dollars, or otherwise, from the figures allegedly agreed upon therefor in said joint report, or otherwise; but defendant alleges that such reductions or deductions as were made from the figures for said items included in said so-called joint report are proper, reasonable and lawful.

XXIV

Answering the allegations contained in paragraph XXIV of said Bill of complaint, defendant denies that said decision and order No. 19521 is either arbitrary or confiscatory or void either in that it is found as a fact therein as shown in lines 1 to 9, inclusive, on page 49 of said amended bill of complaint, or otherwise. And defendant alleges that said finding is neither arbitrary, incorrect, misleading nor confiscatory, and denies that the ascertained financial re-

sults therein referred to are not "fairly stated"; and denies that said finding is contrary to the evidence, or any of it [fol. 275] before the Commission; and denies that the said finding is without support in the record before said Commission either for the reasons alleged by plaintiff in said paragraph XXIV of said bill of complaint, or otherwise. On the contrary, defendant alleges that the said finding is correct, non-confiscatory, and that it is "fairly stated"; that it is in complete accord with the evidence adduced before the Commission in said proceeding, and that it is fully supported in the record. Defendant therefore does not herein or hereby attempt to answer in detail each pretended allegation regarding said finding as contained in said paragraph XXIV of said bill of complaint, but denies that, for the said pretended and alleged reasons, or any other reasons whatsoever, said finding is arbitrary, inaccurate, incorrect, misleading or confiscatory or otherwise erroneous; and alleges that the same is, in all respects, in conformance with the law.

XXV

Answering the allegations contained in paragraph XXV of said bill of complaint, defendant denies that said decision and order No. 19521 is either arbitrary, confiscatory, or void either in that it finds as a fact, as stated in lines 1 to 3 inclusive, of page 53 of said bill of complaint, or otherwise; and defendant denies that the said finding of fact is contrary to the evidence adduced before the Commission, or that it is without support in the record before said Commission. And defendant denies that said finding is based upon, or that the average rate of return therein set forth is taken from the table quoted in lines 9 to 31, inclusive, page 53 of said bill of complaint; but defendant alleges that [fol. 276] the said finding is fully supported by and is in accordance with the evidence adduced before the Railroad Commission in this matter. Defendant denies that the said finding or the said table is either arbitrary or inaccurate or erroneous, or otherwise or in any sense contrary to the facts, or any of them, or contrary to the evidence, or any of it, or without support in the record before the Railroad Commission; and for these reasons defendant alleges that the said finding is in full compliance with law and with the

evidence and record before the Railroad Commission. Defendant therefore denies the allegations concerning the same contained in lines 3 to 31, page 54, lines 1 to 32, page 55, lines 1 to 32, page 56, and lines 1 to 32, page 57, of said bill of complaint; and denies that the said finding was or is either arbitrary, inaccurate, erroneous, misleading or confiscatory, or otherwise contrary to the facts or the evidence, either for the reasons specified in said portions of said allegations, or otherwise.

XXVI

Answering the allegations contained in paragraph XXVI of said amended bill of complaint; defendant denies that said decision and order No. 19521 is either arbitrary, confiscatory or void, or that it shows on its face that it is either arbitrary, confiscatory or void either in that it is found as a fact therein as shown in lines 5 to 7, inclusive, page 58 of said amended bill of complaint, or otherwise; and denies that it is without support in the record or is contrary to the evidence before the Commission. And because the allegations contained therein from line 8, page 58, to line 14, page 59, inclusive, are no argumentative, impertinent, scandalous, [fol. 277] and full of conclusions of law, defendant, being without information or belief or other power to do otherwise, denies the same and each and every part, portion, clause, sentence, phrase and word thereof by which it is alleged or purported to be alleged that the said finding is other than fair, lawful, reasonable and proper and in consonance with the evidence and the record adduced before the Railroad Commission.

XXVII

Answering the allegations contained in paragraph XXVII of said complaint, defendant denies that the said Order and Decision No. 19521 is either arbitrary or confiscatory or void, either in that it is found as a fact as shown in lines 18 to 27, inclusive, page 59 of said bill of complaint, or otherwise.

Defendant denies that the first two sentences of said finding are either arbitrary or inaccurate or misleading or contrary to the facts or any of them, or contrary to the evidence or any of it, and defendant denies that the last sen-

tence of the same is either arbitrary or erroneous or confiscatory or contrary to the facts or any of them, or contrary to the record or any of it; and in this connection defendant alleges that the said finding of fact is supported by proper and competent evidence in the record before the Railroad Commission, and defendant further denies the arguments and conclusions of law stated and alleged by plaintiff in lines 1 to 32, inclusive, page 60, and lines 1 to 11, page 61, in said bill of complaint; and defendant denies that any resolution of the Board of Public Utilities, or any widespread or any expression of public opinion in opposition to one-man car operation is disclosed in the record before the Railroad Commission.

[fol. 278] XXVIII

Answering the allegations contained in paragraph XXVIII of the said bill of complaint, defendant denies that said Decision and Order No. 19521 is either arbitrary, confiscatory or void, either in that it finds as a fact as shown in lines 15 to 22, inclusive, page 61 of said bill of complaint, or otherwise; and denies that it is in any sense arbitrary or inaccurate or confiscatory or contrary to the facts or any of them, or to the record before the Commission, either in respect to the matters alleged by plaintiff in lines 24 to 32, inclusive, page 61, 1 to 32, inclusive, page 62, lines 1 to 30, inclusive, page 63, lines 1 to 30, inclusive, page 64, or lines 1 to 28, inclusive, page 65, or otherwise, or in any manner or degree whatsoever. Defendant for that reason does not here attempt to answer in detail the evidentiary, argumentative and impertinent matter and conclusions of law contained in said portions of said allegations.

XXIX

Answering the allegations and so-called "charges" contained in paragraph XXIX of said complaint, defendant denies that the Commission, either in making or entering said Decision and Order No. 19521, or otherwise, or in refusing to permit plaintiff to put into effect or to charge or collect rates of fare differing from those now in force upon its system, which present rates of fare defendant alleges to be just, reasonable, sufficient, compensatory and non-

confiscatory rates of fare, either wholly or otherwise disregarded either the clear or other intent of the laws of the State of California, or any of them, either as set forth in [fol. 279] the Public Utilities Act of said State, or in any section thereof, or otherwise, either to the effect that the rates of fare of plaintiff or other public utilities shall or should at all times be just or reasonable or sufficient, or otherwise; and defendant alleges that the rates of fare in force upon plaintiff's system are just, reasonable, and sufficient rates of fare for the service rendered by plaintiff, and that the rates of fare proposed by plaintiff are unjust, unreasonable, more than sufficient, greater than compensatory, and wholly and unfairly higher than proper, reasonable and compensatory rates and fares.

Defendant further denies that the Commission, either in making or entering said Decision and Order No. 19521, or otherwise, did not act upon findings based upon the evidence or upon any or other sustaining proof adduced at the hearing in said proceeding; but defendant alleges that in making and entering said Decision and Order, and in making the findings contained therein, and each of them, it acted upon and followed the evidence and proof adduced before it at the said hearings, and did not do aught otherwise.

Defendant denies that the Commission, either in making or entering said Decision and Order, or otherwise, or at any time, place or manner, acted arbitrarily or without fair and proper consideration of the evidence before it, or without proper and adequate proof to support its said findings, and each of the same, and said Decision and Order.

Defendant denies that it acted without authority of law or that it acted in utter or any disregard or defiance either of its powers or duties under the Public Utilities Act, or otherwise, or of the rights of plaintiff or any of them, under either the fifth (5th) or the fourteenth (14th) Amendment [fol. 280] to, or any other provision of the Constitution of the United States; and defendant alleges that, in making and entering said Decision and Order, it acted wholly and solely upon the evidence and proof adduced before it, and upon a fair and proper consideration of the evidence so adduced before it, and upon proper and adequate proof to

support its said findings, and each of the same, and that it acted pursuant to and upon the authority granted to it under the Public Utilities Act, and that in so doing it neither denied to -or took away from plaintiff any of the rights of plaintiff, either under the Fifth (5th) or Fourteenth (14th) Amendment to the Constitution of the United States, or of any provision of any other constitution, law or statute.

[fol. 281] XXX

Answering the allegations contained in Paragraph XXX of said complaint, defendant denies that either immediate or irreparable, or any other, injury or loss or damage whatsoever will result to plaintiff, either as alleged or purported to be shown in said bill of complaint or otherwise, unless a temporary restraining Order should be granted by this Court, either for the reasons alleged in lines 19 to 31, inclusive, page 66, in said Bill of Complaint, or otherwise.

XXXI

And further answering said Bill of Complaint, the defendant alleges that plaintiff operates its said system of street railways in the said City of Los Angeles, and the County of Los Angeles, and the Cities of Vernon and Huntington Park, all in the State of California, under and by virtue of one hundred fourteen (114) franchises granted by said cities and the County of Los Angeles; that of these one hundred fourteen (114) franchises, eighty-one (81) contain clauses providing for a five-cent (5¢) fare without qualifying clause providing for or looking toward any possible change in said fare, sixteen (16) contain clauses providing for a five-cent (5¢) fare but with a qualifying clause substantially as quoted in lines 13 to 17, inclusive, Page 2 of the Amended Bill of Complaint herein, seven (7) contain fare clauses specifying therein a flat five-cent (5¢) fare, and ten (10) contain no fare clause.

XXXII

Defendant further alleges that the said Decision and Order No. 19521 and the Findings of Fact contained therein and each of them, and the conclusions and findings of the

[fol. 282] Commission contained therein and each of them, and the terms and conditions of the same and each of them were and are, and each was and is in accordance with and fully supported by the evidence submitted to the Commission in said proceeding.

XXXIII

Defendant further alleges that the said Bill of Complaint is based upon, and that the prayer thereof is based upon, the wholly erroneous theory that this Court will try the matters contained in said Bill of Complaint de novo, and will arrive at a decision upon said matters from evidence adduced anew before it, regardless of the record made and the evidence taken before the Railroad Commission; that this is in total disregard of the provisions of Article XII, Sec. 20 of the Constitution of the State of California, and of the provisions of Section 63-a of the Public Utilities Act of said State.

XXXIV

Defendant further alleges that said complaint is based upon the wholly erroneous theory that future capital expense of a public utility must or should be considered by the Railroad Commission and be included in valuations of property made by it for rate-making purposes, and defendant alleges that the rates of public utility corporations are, and properly must be made upon the basis of allowing a fair return upon the fair value of the property found by the regulatory body to be at the time of the investigation devoted to the public service, and defendant alleges that rates so made and so constituted upon property so dedicated and devoted to the public service are proper and nonconfiscatory rates, and are lawful, just and reasonable.

[fol. 283]

XXXV

That many of plaintiff's franchises are about to expire; that said matter has been called to the attention of plaintiff in a formal order of the Railroad Commission; that nothing has been done by plaintiff to remedy this unfortunate situation which defendant alleges to be of great importance in connection with the finding of a fair value of plaintiff's properties.

XXXVI

That in the year 1915 the Railroad Commission pointed out to this public utility in a formal decision (Decision No. 2193 in Application No. 894, reported in 6 C. R. C. 272) that in its opinion the financing of public utility properties largely by bonds is unreasonable and not in the public interest. In that decision it was declared that the studies then made showed a probability that no showing could be made on the value of plaintiff's plant "equal to the face value of its bonds" and the application of plaintiff and its subsidiary corporations for refinancing was denied; that nothing has ever been done to remedy this unsatisfactory condition; that no modified plan satisfactory to the Railroad Commission has ever been presented; that in 1924 another reorganization application was filed with the Commission (Application No. 10303) which matter is still pending before the Railroad Commission unsubmitted and undetermined; that it is shown by the record in that matter that the unsatisfactory financing condition mentioned above has not been remedied.

XXXVII

That it is unnecessary for plaintiff to have an increase in its fares for financing purposes; that plaintiff's financing difficulties arise from totally different sources, to-wit: the [fol. 284] unreasonable, improper and contrary to public policy proportion of bonds to stock now outstanding on the system of plaintiff and its subsidiaries; that this unsatisfactory condition has not been remedied and is not proposed to be remedied; that this situation bears and possesses a great significance upon the question of the fair value of plaintiff's properties devoted to the public service.

XXXVIII

That in making up its valuation figures in the bill of complaint herein plaintiff has included properties devoted solely to auto-bus service as distinguished from street car service; that plaintiff asks no increase in the fares charged and collected by it for its said auto-bus service; that the said auto-bus fares are already upon a higher and greater plane than plaintiff's street car fares; that any increase in plaintiff's street car fares without a corresponding in-

crease in its auto-bus fares will create a condition of unreasonable, unfair, improper and unlawful discrimination as between plaintiff's several patrons and classes of patrons; that any such increase in its street car fares without a corresponding increase in its auto-bus fares will create an unreasonable, unfair, improper and unlawful preference to plaintiff's said auto-bus patrons.

XXXIX

That plaintiff's system is to a large degree obsolete and inadequate; that plaintiff's street railway system is constructed as a narrow gauge railroad of 3′ 6″ gauge instead of a standard gauge of 4′ 8½″; that because of this fact plaintiff's property is burdened with a permanent and continuing excessive operating expense in that it requires a [fol. 285] higher standard of track maintenance than is required on broad gauge track to enable the cars to travel as safely over the rails and also in that it requires the installation of more expensive special work when roads are used in connection with other electrical railroads constructed with standard broad gauge tracks; that the other electric railroad in the City of Los Angeles, to-wit: The Pacific Electric Railway Company's system, is constructed upon a standard gauge of 4′ 8½″; that the use of said narrow gauge restricts the size of equipment which may be operated over plaintiff's tracks; that this fact decreases materially the convenience and the comfort of the passengers hauled by plaintiff and increases the expense of providing and of operating sufficient equipment and capacity for carrying of its patrons; that the use of said narrow gauge prevents other car routing connections with other electric railroads having standard gauge; that the use of said narrow gauge effectually interferes with the resale of obsolete equipment which might otherwise be sold to advantage for use in other and smaller cities; that the salvage value of plaintiff's rolling stock is therefore greatly and seriously diminished.

XL

That a large proportion of the street cars owned and used by plaintiff in its service possess floor levels of excessive height and require excessive delays in loading and unloading of passengers and cause serious inconvenience to

passengers boarding and alighting from its cars; that the said results arose by virtue of the type of equipment used; that said equipment is not designed in accordance with modern standards; that plaintiff's said property is obsolete and inadequate to this extent and that this fact lessens the value of the plaintiff's system for rate-making purposes.

[fol. 286] XLI

That the street car system of plaintiff is obsolete and partially inadequate because many of its tracks are located along routes that do not best serve the present urban population of the City of Los Angeles; that this system as it now exists is a composite aggregation of many separate and distinct street railway lines which were constructed when the City of Los Angeles had a population of less than 300,000; that the population of the said City of Los Angeles now exceeds 1,000,000 persons; that the population served by plaintiff's electric railway system exceeds 1,200,000 persons; that if said system were to be reconstructed anew upon plans based solely upon the best possible service to the said present population served by plaintiff, many important changes in its said system would be necessary and many of plaintiff's lines would either not be constructed at all or would be constructed upon other and different routes from those now used; that this fact materially diminishes the value of plaintiff's system and properties as a whole for rate-making purposes.

XLII

That no less than 250 of the street cars owned by plaintiff are so old, obsolete and inadequate that they are seldom, if ever, used and are, therefore, of little or no actual value as operative property; that a large proportion of the value of the said 250 cars must be subtracted from any value given to the properties of the plaintiff in arriving at a fair value for its system; that the said 250 cars are in addition to the cars which are actually operated and used by plaintiff in the operation of its system, even under peak conditions of traffic.

[fol. 287] XLIII

That the flat fare increases prayed for by plaintiff do not represent and are not proper, even assuming a need for

more revenue; that such increases are not and would not be in the public interest.

XLIV

Defendant further alleges that it is the intent and purpose of defendant in and by the within answer to deny, contradict and controvert each and every allegation, assertion, assumption or statement contained in said Bill of Complaint by which it is alleged, asserted, assumed or stated, or by which it is made to seem or in any manner to appear that the order of defendant Railroad Commission No. 19521, entered and rendered by it in said Application No. 13323 before it did or had, or does or has, the effect of taking or attempting to take the property, or any of the property, of plaintiff, either without due process of law or otherwise, or of denying to plaintiff either the equal protection of the laws, or any of them, either under the Constitution of the United States, or any provision thereof, or amendment thereto, or of confiscating the property of plaintiff or any of it. In other words, defendant hereby alleges and asserts in defense and in controvention and in answer of and to each and every such allegation in said complaint that its said Order and Decision No. 19521 was and is proper, lawful and non-confiscatory, and that the rates therein and thereby kept in effect upon the street railway system of plaintiff are reasonable, fair, proper, lawful, compensatory and non-confiscatory.

In concluding the within Answer defendant alleges that the amended bill of complaint herein is to a large degree argumentative and redundant, and that it contains much impertinent, irrelevant, redundant, argumentative and [fol. 288] merely evidentiary material and numerous conclusions of law, all in disregard, disrespect and violation of Equity Rules numbers 21 and 25 of this Court; that the inclusion of said matters has rendered the answer of large portions of said amended bill of complaint impossible at this time without frequent adoption by reference, and allegation upon information and belief; that defendant has filed its motion to strike a large portion of such argumentative, redundant, impertinent, irrelevant and merely evidentiary matter and numerous such conclusions of law from said amended bill of complaint; said amended bill of complaint

is in disregard, disrespect and violation of said Equity Rules of this Court, and that, although defendant files this answer at this time, it does so under protest, and reserving all rights and privileges of whatsoever kind, sort, character or description to appeal from or otherwise draw in question any order or directions of this Court denying in whole or in part its said motion to strike.

Wherefore, defendant prays that an order be made and entered by this Court adjudging and decreeing:

That the said Decision and Order No. 19521 of said Railroad Commission is lawful and valid, and that said Decision and Order is in full force and effect and is binding upon plaintiff, Los Angeles Railway Corporation;

That neither a restraining order nor an interlocutory nor permanent injunction be granted herein, but that plaintiff's petitions for such restraining order interlocutory and permanent injunction be severally denied;

That plaintiff's Bill of Complaint herein be dismissed and denied, and that the said defendant be hence dismissed with its costs.

Railroad Commission of the State of California, by Carl I. Wheat. Carl I. Wheat, Reginald L. Vaughan, Roderick B. Cassidy, Solicitors for Defendant, State Building, San Francisco, California.

[fol. 289] [File endorsement omitted.]

[fol. 290] In United States District Court

[Title omitted]

Answer of the Defendant City of Los Angeles—Filed Aug. 7, 1928

Comes now the City of Los Angeles, heretofore by order of this court permitted to intervene as a party-defendant, and, as such defendant, in answer to the amended bill of complaint filed herein, admits, denies and alleges as follows:

I

Answering Paragraph I, and, particularly, lines 4 to 9 thereof set forth on page 2 of the amended bill of com-

plaint, defendant states that it has not sufficient information or belief upon the subject of the aggregate number of track miles of electric railway and motor bus lines operated by the plaintiff in the cities set forth in said paragraph, and placing its denial on that ground, defendant denies that the plaintiff is operating a unified passenger transportation system consisting of double and single track electric railway and motor bus lines aggregating more than 400 single track miles of electric railway and aggregating more than 90 miles of motor bus lines in and between the City of Los [fol. 291] Angeles and the cities set forth in said paragraph of the amended bill of complaint.

Further answering said paragraph, with reference to the mileage plaintiff is permitted to operate its street railway upon the streets of the City of Los Angeles, this defendant alleges that the plaintiff is now so operating its street railway, under and by virtue of 102 franchises granted and sold to it by the City of Los Angeles and the County of Los Angeles, and that the total franchise mileage which plaintiff obtained by virtue of the franchises granted to it is 136.24, double track.

Further answering said paragraph, defendant admits that the plaintiff's electric lines occupy public streets of the City of Los Angeles; defendant denies that a majority of the franchises substantially and/or expressly provide that "the rate of fare to be charged under this franchise shall not be more than five cents for one continuous ride in the same general direction within the corporate limits of the City, except upon a showing before a competent authority having jurisdiction over rates of fare that such greater charge is justified."

Further answering said paragraph, defendant states that plaintiff is now operating under 18 franchises granted by defendant, which said franchises contain a clause similar to that aforesaid; that said franchises permit plaintiff to operate only 12.33 miles of double-track railway; that said number of franchises is only 17.65% of the total number of franchises held by plaintiff and granted by defendant; and that the said franchises permit plaintiff to operate only 9.05% of the total number of franchise miles under which plaintiff has authority from this defendant to operate its railway.

Further answering said paragraph, defendant states that plaintiff is now operating under 73 franchises granted by [fol. 292] defendant, which said franchises contain the following term and condition:

"That the rate of fare for any distance over said road or its branch, one way, shall not exceed five cents for one passenger;"

that said franchises permit plaintiff to operate 113.41 miles of double-track railroad; that said number of franchises is 71.5% of the total number of franchises held by plaintiff and granted by defendant; and that the said franchises permit the plaintiff to operate 83.24% of the total number of franchise miles under which plaintiff has authority from this defendant to operate its railway.

Further answering said paragraph, defendant states that plaintiff is now operating under five franchises, two of which franchises were granted by defendant and three of which were granted by the County of Los Angeles prior to the time in which the territory in which the street railway is operated was annexed to the City of Los Angeles; that said franchises contain no term or condition relative to fares; that said franchises permit plaintiff to operate only 2.93 miles of double-track railway; that said number of franchises is only 4.90% of the total number of franchises held by plaintiff and granted by defendant; and that the said franchises permit plaintiff to operate only 2.15% of the total number of franchise miles under which plaintiff has authority from this defendant to operate its railway.

Further answering said paragraph, defendant states that plaintiff is now operating under 3 franchises, all of which were granted by the defendant, which said franchises contain the following term and condition:

"That the rates of fare charged shall not exceed two and one-half cents per mile for any distance; provided, however, that no fare need be less than five cents;"

that said number of franchises permit plaintiff to operate only 3.25 miles of double track railway; that said number of franchises is only 2.94% of the total number of fran- [fol. 293] chises held by plaintiff and granted by defendant; and that the said franchises permit plaintiff to operate only 2.39% of the total number of franchise miles under which

plaintiff has authority from this defendant to operate its railway.

Further answering said paragraph, defendant states that plaintiff is now operating under two franchises granted by defendant, which said franchises contain the following term and condition:

"That the rate of fare for passengers on said railway shall never exceed ten cents. The said board of supervisors reserving the right to establish, at any time, a fare not exceeding ten cents, and not less than five cents";

that said franchises permit plaintiff to operate 2.31 miles of double-track railroad; that said number of franchises is 1.96% of the total number of franchises held by plaintiff and granted by defendant; and that the said franchises permit the plaintiff to operate 1.69% of the total number of franchise miles under which plaintiff has authority from this defendant to operate its railway.

Further answering said paragraph, defendant states that plaintiff is now operating under one franchise granted by the county, which said franchise contains the following term and condition:

"That the rate of fare for passengers on said railway shall never exceed three cents per mile;"

that said franchise permits plaintiff to operate 2.01 miles of double-track railroad; that said franchise is .098% of the total number of franchises held by plaintiff and granted by defendant; and that the said franchises permit the plaintiff to operate 1.48% of the total number of franchise miles under which plaintiff has authority from this defendant to operate its railway.

That all of said franchises granted by the defendant City were granted in accordance with the provisions of the Constitution of the State of California, the General Laws of the State of California, the freeholders' Charter of the City [fol. 294] of Los Angeles, after it became effective, and the following ordinances, to-wit: Ordinance No. 27,557, entitled, "An Ordinance prescribing a method of procedure for the granting of franchises, permits and privileges in, on, through, across, under and over streets, highways and other places in the City of Los Angeles," passed by the Council of the City of Los Angeles on the 20th day of May,

1913, and approved by the Mayor of the City of Los Angeles on the 20th day of May, 1913; which said ordinance was submitted to a vote of the people by virtue of Ordinance No. 27,558 (New Series), entitled, "An Ordinance ordering the submission to a vote of the qualified electors of the City of Los Angeles at the next general municipal election to be held in said City on Tuesday, the 3rd day of June, 1913, of a certain proposed ordinance prescribing a method of procedure for the granting of franchises, permits and privileges in, on, through, across, under and over streets, highways, and other places in the City of Los Angeles," passed by the Council of the City of Los Angeles on the 20th day of May, 1913, and approved by the Mayor of the City of Los Angeles on the 20th day of May, 1913, and which said ordinance was adopted by a vote of the people of the City of Los Angeles, and by virtue of Ordinance No. 58,200, entitled, "An Ordinance prescribing the method of procedure for the granting of franchises, permits, and privileges across, under and over streets, highways and other places in the City of Los Angeles, and repealing Ordinance No. 27,557 (New Series) submitted to and approved by vote of the people at the general municipal election held June 3, 1913," which said ordinance was, by the Council of the City of Los Angeles, at its own instance, submitted to a vote of the qualified electors of the City of Los Angeles at the general municipal election held in said City on Tuesday, the 7th day of June, 1927, and which said ordinance was, on Monday, the 13th day of June, 1927, by the Council of the said City, by a resolution duly and regularly adopted, [fol. 295] found, determined and declared that a majority of the votes cast at said general municipal election upon said ordinance were cast in favor thereof and that said ordinance was thereby adopted.

Further answering said paragraph, defendant states that none of the franchises which contain a provision such as that set forth in the amended bill of complaint were granted by the defendant City prior to March 2, 1920, and that all franchises granted by the City prior thereto contain the aforesaid limitation, condition and rate of five cents; that said rate of five cents is a term, a condition, and part of the consideration for each and every franchise in which such term and condition for five cent fare is set forth; that the said term and condition contained in said franchises

has never been altered or changed by any of the parties, or by any other body or authority with the power to make such change; and that such terms and conditions regarding five cent fare are now in full force and effect in all of the franchises granted by the defendant City and under which the plaintiff herein is now operating its street railway on the streets of the City of Los Angeles.

Further answering said paragraph, defendant states that no change or alteration has been made by the parties, or anybody authorized so to do, in the terms and conditions regarding rates of fares in the franchises, and that all of the franchises under which plaintiff is operating its street railway on the streets of the City of Los Angeles are now still in full force and effect as to each and every term of each and every franchise granted by this defendant, and under which plaintiff is operating its street railway on the streets of the City of Los Angeles which contain in their terms and conditions a provision for a five cent fare and for a change thereof.

That the defendant City of Los Angeles granted and sold to the plaintiff the franchises it now owns, by virtue of the [fol. 296] power granted to it by an act of the Legislature of the State, enacted March 21, 1872, and known as Section 497 of the Civil Code, and the subsequent amendments to said section; that said franchises were sold by this defendant to the plaintiff under and by virtue of an Act of the Legislature entitled the "Franchise Act of 1893," of Statutes of 1893, page 288, and subsequent amendments to said act, and what is known as the "Broughton Act," enacted in 1901, Statutes of 1901, page 265; that under the Constitution of the State of California the defendant City of Los Angeles became a charter city in the year 1898, and since that time has had full power in the matter of the regulation and use of the public streets of said City; and that since the constitutional amendment made in 1896 to Section 6, Article XI, of the Constitution, the defendant has had full power and control over all matters that are "municipal affairs"; that the use, control and regulation of the streets of the City of Los Angeles is a "municipal affair"; that the granting of franchises for the use of the streets of the City of Los Angeles to public utilities is a "municipal affair"; that the regulation and fixing of rates to be charged for the serv-

ice to be rendered by public utilities using the streets of the City of Los Angeles is a "municipal affair"; that in "municipal affairs" the City of Los Angeles under its charter is sovereign and superior to the general laws, where the City of Los Angeles has regulated on such matters; that in the fixing of rates in consideration for the use of its streets by street railways the City of Los Angeles had full power to grant franchises and to enter into contracts definitely fixing said rates for a definite period of years, until the going into effect of the amendments to section 23 of Article XII of the Constitution of the State of California, adopted November 3, 1914; that since that date the Railroad Commission of the State of California has had full power and control over the fixing of rates for the use of the [fol. 297] public streets of the City of Los Angeles by street railway corporations; that since the adoption of its charter in 1898 there have been many amendments to said city charter, and that in 1925 a new freeholders' charter was adopted, under and pursuant to Section 8 of Article XI of the Constitution of the State of California; that by said new charter, and the amendments made to the old charter, the defendant City has not been deprived of the aforesaid power and control of its streets. That the 102 franchises under which the plaintiff herein is now operating its street railway upon the streets of the City of Los Angeles were granted and sold during a period of time running from August 5, 1886, to December 7, 1927; that said franchises were granted to plaintiff and its predecessors at different times during said period; that all of said franchises are now active and operative within the City of Los Angeles, and under them plaintiff is operating its railway upon the streets of the said City; that the City, in granting the said franchises, sold the same, after advertising and offering them for sale, to the highest bidder for the rights granted by each franchise; that each of said franchises was granted and sold upon the condition that the purchaser thereof would agree to the terms and conditions therein by filing with the City of Los Angeles a written acceptance of the rights granted in said franchises; that each of the franchises aforesaid have been accepted by the plaintiff, or its predecessors, and a written acceptance of the terms in each of said franchises has been filed with said City; that there

are numerous terms and conditions in each of the franchises, but not all of the aforesaid franchises contain the same terms and conditions; that most of the franchises contain similar terms and conditions to those set forth in Franchise Ordinance No. 2532 (New Series), which was adopted December 24, 1894, and which is now in full force and effect, the terms and conditions of which are as follows:

[fol. 298] Section 1.

* * * * * * *

"Provided, that in all cases where this franchise is granted over streets now occupied by other lines of street railway owned by persons or corporations, whether named herein, or not, that said W. D. Larabee, and his assigns, shall have the right to operate over any and all such tracks *in accordance with and limited only by the statutes of the State of California applicable thereto;* and in case the gauge of the tracks of said other persons or corporations shall not conform to the gauge of the tracks of said W. D. Larabee, or his assigns, then the said W. D. Larabee, or his assigns, shall be permitted to lay a third rail over the distance traversed by said two roads jointly." (Italics ours.)

"Section 3. *That the rate of fare for any distance along said road or its branches, one way, shall not exceed 5 cents for one passenger,* and shall transfer at connecting points on the lines of said grantee or his assigns or lines which said grantee or his assigns may operate so as not to return passengers in the general direction from which they came, and that persons under eighteen years of age who attend the public schools of said city, shall be required to pay but half fare, provided said pupils shall purchase their tickets in quantities of at least one dollar's worth at a time; such tickets to be available only between the hours of 8 a. m. and 6 p. m., in actual passage to and from school; and said grantee, or assigns, shall sell such tickets whenever requested to do so by a pupil who shall present a certificate from a teacher, approved by the Superintendent of Schools of the city, that he or she is such pupil of said schools.

"And further, that said grantee, or assigns, shall carry policemen and firemen and letter carriers, Mayor and Coun-

cilmen, free on said cars when on duty, subject at all times to the rules of the road.

"Provided further, that said grantee, or assigns, shall, on or before December 15th, of each year, pay to the City Tax and License Collector, the annual license upon each car fixed by the existing ordinances of said city.

"Section 4. The above rights and privileges are granted upon the express condition that work upon that portion known and described as the Kuhrtz-street line of said road and the line from Estrella avenue to the west city limits of Washington street shall be commenced within sixty days, and completed, equipped and in operation as an electric road for its full length within eight months from the date hereof. The remaining portion of said railroad line shall be fully equipped and completed as provided herein within two years from the date of the approval of this ordinance. [fol. 299] *Provided further, that this franchise is granted upon each and every condition herein set forth, and a failure to comply with each or any of said conditions shall work an immediate forfeiture of all the rights herein granted.*

"Section 5. *The said grantee or assigns is hereby required to file a written acceptance of the terms and conditions hereof* with the City Clerk of said City within thirty days after the passage of this ordinance, together with a bond of not less than ten thousand dollars, for the faithful carrying out of the terms of this franchise." (Italics ours.)

II

Answering Paragraph III, this defendant denies that plaintiff's present rates of fare are confiscatory, and denies that the defendant Railroad Commission has denied plaintiff permission to put into effect, and/or to charge, and/or to collect just, reasonable and/or compensatory rates of fare. Denies that plaintiff's present rates of fare are unjust and/or unreasonable and/or non-compensatory and/or confiscatory, and denies that the decision and/or order of the Railroad Commission is confiscatory and/or was [fol. 300] arbitrarily and/or unlawfully made and/or entered, and denies that it takes the property of plaintiff without just compensation, and denies that it deprives plaintiff of its property without due process of law, and

denies that it denies to plaintiff the equal protection of the law, and denies that said decision and/or order is contrary to and/or in violation of the Fifth and/or Fourteenth Amendments to the Constitution of the United States.

Further answering said paragraph, this defendant denies that the further facts and/or circumstances and/or conditions, and/or any facts, averred and/or set forth in the amended bill of complaint disclose and/or justify and/or necessitate the exercise of the jurisdiction of this court to afford the relief therein prayed for by plaintiff, or any other relief.

III

Answering paragraph IV, and particularly lines 23 to 32, page 6, this defendant states that it has not sufficient information or belief upon the subject of the allegations contained in said paragraph and said lines, and placing its denial on that ground, defendant denies that the late Henry E. Huntington desired to attempt to increase the earnings of the company by other means than the collection of a basic fare greater than five cents; and denies that the plaintiff, by reason of such attitude on the part of Mr. Huntington, or any other reason, is now indebted to his estate and/or interests, as evidenced by unsecured loans, and/or any other loans, and/or by unpaid interest on funded and/or unfunded debt, in an amount in excess of $8,000,000.00, and/or any other amount; and denies that said amount, or any other amount, represents in large part, or otherwise, the accumulated, or other, deficit over a long, or other, period of years, by reason of plaintiff's inability and/or failure to earn a fair return.

[fol. 301]

IV

Answering Paragraph V, this defendant denies that by reason of the facts and/or circumstances in the amended bill alleged, and/or otherwise, the present rates of fare on plaintiff's street railway system have become and/or were particularly, or otherwise, during the years 1926 and 1927, and/or are now, and/or will continue to be for the future, unjust and/or unreasonable, and/or inadequate and/or insufficient, and/or non-compensatory and/or confiscatory of

the property used by and/or useful to plaintiff in the transportation of passengers upon its said system.

Further answering said Paragraph V, this answering defendant denies that the said present rates of fare have been at least, or at all, during said period, and/or now are, and/or will continue to be, insufficient to yield a reasonable compensation for the services rendered by plaintiff, and/or have been, and/or now are, and/or will continue to be insufficient and/or inadequate to provide a fair return upon the fair and/or reasonable value of the property actually used by plaintiff in the operation of said railway system and/or devoted to the public service.

Further answering said Paragraph V, this defendant denies that the said present rates of fare have deprived, and/or do now deprive, and/or will continue to deprive plaintiff of a fair and/or reasonable return upon the fair and/or reasonable value of its property devoted to the public, contrary, or otherwise, to the Constitution of the United States, and/or at all.

V

Answering Paragraph VI, this defendant states that it has not sufficient information or belief upon the subject of the allegations contained in said paragraph, and placing its denial on that ground, defendant denies:

That as of September 30, 1926, plaintiff had, and/or now has issued and/or outstanding 200,000, or any other number [fol. 302] of shares of its common capital stock of the par value of $100 each, or other sum, and/or a total of $20,000,000 par value of common capital stock, or any other sum, upon which dividends, in bonds only and/or not in cash and/or stock, in the sum of $1,500,000, and/or any other sum, have been paid since the year 1911, and/or any other year; and denies that all of said matters are shown in the financial, or other, statement made on page 8;

And denies that as of said date, September 30, 1926, or any other date, the funded, or other, debt of the plaintiff, and/or its subsidiary company, City Railway Company of Los Angeles, or any other company, was the sum of $21,124,000, or any other sum; and denies that the same is shown on the consolidated, or other, statement shown on pages 8 and 9 of the amended bill of complaint;

And denies that as of March 31, 1927, or any other date, said consolidated, or other, funded, or other, debt had been reduced by reason of accruals to sinking funds, or any other reason, to the sum of $20,897,000, or any other sum; and denies that the same is shown in the statement set forth on page 9;

And denies that as of date May 31, 1928, or any other date, said consolidated, or other, funded, or other, debt has been further, or otherwise, decreased, by reason of accruals to sinking funds, or for any other reason, to the sum of $19,990,085, or any other sum; and denies that said sum, or any other sum, is the amount of said, or other, consolidated, or other, funded, or other, debt;

And denies that as of September 30, 1926, or any other date, the floating and/or unfunded, and/or other debt of plaintiff and/or its subsidiary company, the City Railway Company of Los Angeles, or any other company, was the sum of $11,168,380, or any other sum; and denies that the same is shown on the statement contained on page 10a, or any other statement;

And denies that as of date May 31, 1928, or any other date, said floating and/or unfunded, or any other debt has [fol. 303] increased to, and/or is the sum of $11,697,037, or any other sum;

And denies that excluding from each of the above totals, or any other totals, of plaintiff's floating and/or unfunded, and/or other debt the indebtedness due and/or payable to said H. E. Huntington, and/or his estate and/or his interests, and/or any other person, the annual minimum interest, and/or any other interest, requirements on the remainder, or any other part of said floating and/or unfunded and/or other debt, and/or on said funded, or other debt, for the years 1926, 1927 and part of 1928, or any other years, were, and/or are, as contained in the statement set forth on page 11;

And denies that this or any other figure includes interest to May 31, 1928, or any other date, only, in the sum of $63,919, or any other sum, on the unfunded, or other, debt, exclusive, or otherwise, of that due the Huntington, or any other, estate and/or interests.

VI

Answering Paragraph VII, and particularly that portion thereof appearing on lines 14 and 16, page 13, this defendant denies that the sum of $1,282,559.00 is equivalent to a return of only 2.79% on the minimum value of the property of plaintiff then devoted to the public service; and denies that said sum of $1,411,241.00 is equivalent to a return of only 3% on the minimum value of the property devoted by plaintiff to the public use during the year 1927;

Further answering said Paragraph, and particularly lines 4 to 20 of page 14 of the amended bill, this answering defendant denies that for the year 1928 based upon actual or other figures for the first quarter, and/or upon estimates on the same basis for the remaining three quarters of said year, plaintiff's total operating revenue under the 5 cent fare will be no more than $13,300,000, and/or that its total [fol. 304] operating expenses including taxes will not be less than $12,688,000; and denies that there will be left only an estimated net operating income for the year 1928 of not more than $612,000 available for interest, and/or fair return; and denies that said sum of $612,000 is equivalent to a return of only 1.30% on the minimum value of plaintiff's property used, and/or useful in the public service during said year 1928; and denies that the estimate set forth in said paragraph is as accurate as it is now possible to make it; and denies that the evidence presented to the Commission, as alleged in said paragraph stands unrefuted, and/or uncontradicted, and/or unquestioned in the record of said proceedings, as alleged in said paragraph.

VII

Answering Paragraph VIII, this answering defendant denies that the estimate mentioned in said paragraph revealed that in order, or otherwise, to enable plaintiff's system to keep pace with the growing needs and/or requirements of the city, and/or its inhabitants, capital expenditures in the sum of $6,124,110, and/or renewals in the sum of $3,138,894, and/or total expenditures of $9,263,004, were, and/or are required to be made by plaintiff for said period stated in said paragraph;

Further answering said Paragraph VIII this answering defendant denies that each, and/or every item set forth in

said estimate is necessary, and/or essential to the proper development and growth of plaintiff's system, and/or to the continued rendition by plaintiff of safe, and/or adequate, and/or efficient transportation service; and denies that the said estimate stands in the record of said proceedings unrefuted, and/or uncontradicted, and/or unquestioned as to the accuracy, and/or propriety, and/or necessity of all, and/or any of said items;

[fol. 305] Further answering said Paragraph VIII this defendant denies that if plaintiff is compelled to keep in effect, and/or to charge, and/or collect its present basic fare of five cents it will be unable to carry out said program of additions, and/or betterments, and/or renewals; and denies that as a consequence thereof, and/or otherwise, plaintiff will be unable to continue to render safe, and/or adequate, and/or efficient transportation service; and denies that the development, and/or service requirements of the system must inevitably, or otherwise, be curtailed below the point necessitated, or otherwise, and/or demanded, or otherwise, by its car riding public.

VIII

Answering Paragraph IX, and particularly that portion of said paragraph appearing in lines 27 to 31 inclusive, of page 26, this answering defendant denies that the actual present fair value of plaintiff's properties devoted to the public use, upon the bases of the figures, and/or under the methods agreed upon in said report, is substantially greater than the sums therein shown, when all proper elements are taken into account, and/or otherwise; and denies that the actual present fair value of plaintiff's properties is $47,000,000, and/or any other like sum;

Further answering said paragraph, and particularly the matter alleged on page 29 of the amended bill of complaint, defendant denies that the actual present minimum fair value of plaintiff's properties devoted to the public use is in excess of $47,000,000, when all proper, and/or lawful elements of value are taken into account, and/or otherwise, and/or any other like sum.

IX

Answering Paragraph X, this answering defendant denies that a return of not less than 8% per annum upon the [fol. 306] present fair value of the property used by plaintiff in the public service is a fair, and/or reasonable return, and/or is the rate of return expected, and/or usually realized in the locality where such property is located with due regard to the risks attending them, and/or otherwise, and/or otherwise and/or under rates, and/or charges that are in, and/or of themselves, reasonable, and/or commensurate with the value of the service rendered;

Further answering said Paragraph, this answering defendant denies that the rates of fare now charged, and/or collected by plaintiff yielded in the year 1926, a net income available for return of less than 3% upon the minimum fair, and/or reasonable value of plaintiff's properties devoted to the public use, and/or fell short of earning a 6% return on such value by more than $1,470,000, and/or any other sum, and/or fell short of earning a 7% return on such value by more than $1,940,000, or any other sum, and/or fell short of earning a return of 8% on such value by more than $2,390,000, or any other sum, and/or fell short of earning a return of 6% on such value by more than $1,500,000, or any other sum, and/or of earning a return of 7% on such value by more than $2,000,000, or any other sum, and/or of earning a return of 8% on such value by more than $2,500,000, or any other sum;

Further answering said Paragraph, this answering defendant denies that the return received by plaintiff from the present rate of fare for the year 1927 yielded a net income available for return of less than 2½% upon the minimum fair, and/or reasonable value of plaintiff's property devoted to the public use;

Further answering said Paragraph defendant denies that the return received by plaintiff from the present rate of fare charged, and/or collected by it upon its said transportation system has not been, and/or is not now sufficient to maintain, and/or support the credit of plaintiff and to [fol. 307] enable it to secure capital funds for the purpose of providing for new construction, and/or equipment; and denies that plaintiff is not now, and/or has not for some

time past been earning sufficient net income available for return to meet the interest payments on its funded, and/or unfunded debt; and denies that by reason of such insufficient earnings, or any other reason, its credit is being permanently, and/or irrevocably jeopardized, and/or impaired with the consequence, or otherwise, that unless plaintiff is permitted to, and/or does materially increase its rates of fare as prayed for in this amended bill, it will be impossible for plaintiff to continue the requisite betterments, and/or extensions to its property that said adequate, and/or efficient transportation service requires, and/or that it is willing, and/or anxious to make, and/or that the public demands;

Further answering said Paragraph, this answering defendant denies that plaintiff's actual net income available for return for the years 1926, and/or 1927, or either of them, is respectively equivalent to a return of 8% on approximately $16,800,000; and denies that said figure under no conceivable theory, and/or basis of valuation even remotely approximates the fair value of plaintiff's property used, and/or useful in the public service during said years.

X

Answering Paragraph XI, and particularly page 32 of the amended bill this answering defendant denies that all of the allegations set forth in said amended bill were, and/or are true, and/or correct, and/or stand in the record before the Commission uncontradicted, and/or unrefuted, and/or unquestioned.

XI

Answering Paragraph XII, this answering defendant denies that plaintiff was, and/or is still faced with total, [fol. 308] and/or continued confiscation of its property under the basic 5 cent fare;

Further answering said Paragraph, this answering defendant denies that the said facts, and/or allegations set forth in said supplemental application, and/or each of them, and/or any of them, were, and/or are true; and denies that said emergency did, and/or does now exist; and denies that all or any of said matters were established be-

fore the Commission at the various hearings held by it in the proceeding, by evidence, or otherwise, in the majority, or other instances, and that said evidence was uncontradicted, and/or unrefuted, and/or unquestioned, and/or established, in other instances by the overwhelming or other preponderance of the evidence, or at all.

XII

Answering Paragraph XIII, and particularly the matters alleged on page 37 of the amended bill, this defendant denies that the Railroad Commission failed, and/or neglected, and/or refused in its subsequent, and/or other Decision, and/or Order No. 19521, to determine the major issues of the proceeding, and/or failed, and/or neglected, and/or refused, to find, and/or determine, a proper rate of return, and/or a proper allowance for operating expenses, and/or depreciation, and/or the present fair value of plaintiff's properties devoted to the public use.

XIII

Answering Paragraph XIV, and particularly the matters alleged on page 38 of the amended bill, this answering defendant denies each of said Findings of Fact, I and/or IV, and denies that each, and/or all, and/or any of the other Findings of Fact of the Commission in said Decision, and/or Order No. 19521, are contrary to the evidence, and/or without support in the record; and denies that each, and/or all, and/or any of said Findings of Fact in said Decision, and/or Order, are in disregard of the evidence; and denies that they are based solely upon estimates in- [fol. 309] troduced in evidence before the Commission by the petitioner's engineers (Exhibits 52, and/or 64 in Record); and denies that said estimates were, and/or are arbitrary, and/or inaccurate, and/or erroneous, and/or unlawful; and denies that said estimates fail to take into consideration, and/or to make any allowance for working capital, and/or going value, and/or development cost, and/or the so-called unagreed items referred to in the joint report; and denies that said estimates arbitrarily, and/or without reason, and/or justification, and/or explanation, and/or cause, reduce certain of plaintiff's overhead allow-

ances more than $1,000,000 below the figures agreed upon therefor in the joint report;

Further answering said Paragraph, this answering defendant denies that for the reason set forth in said Paragraph, or any other reason, said estimates of the petitioner's engineers (Exhibits 52, and/or 64 in the Record) were, and/or are not lawful, and/or any evidence as to the then present fair value of plaintiff's property, used, and/or useful in the public service; and denies that part, and/or all, and/or any of the Findings of Fact in said Decision, and/or Order No. 19521 are based on said arbitrary, and/or unlawful estimates, and/or are contrary to the evidence, and/or without support in the record before the Commission.

XIV

Answering Paragraph XVII, and particularly the matters alleged on page 41 of the amended bill, this answering defendant denies that the rates of fare requested by plaintiff to be authorized by the Commission in its said, or other Application No. 13323, to-wit, the basic fare of seven cents, with four single-fare tokens for twenty-five cents, are just, and/or reasonable rates from the standpoint of the traveling public; and denies that said rates of fare are no more than sufficient to give plaintiff a fair, and/or reasonable return upon the fair, and/or reasonable [fol. 310] value of its properties used, and/or useful in the public service; and denies that plaintiff's properties are modern, and/or that said properties, including tracks, and/or roadbeds, and/or equipment, or any of them, are in first-class, operable condition; and denies that said, or any, of plaintiff's properties compare favorably, or otherwise, with any street railway in the state, and/or nation; and that the service rendered by plaintiff to the public is better than and/or as good as that of any other street railway in the state.

Further answering said paragraph, this answering defendant denies that plaintiff is constantly endeavoring to economize, and/or is economizing in its operating costs, and/or methods in every practical manner, and/or to that degree, and no more, which is consistent with good management, and/or which will enable it to meet the demands of

growth of population, and/or changing conditions, and/or of furnishing as safe, and/or adequate, and/or efficient transportation service as is possible under the physical conditions peculiar to the City of Los Angeles, and/or its environs, and/or otherwise.

XV

Answering Paragraph XVIII, and particularly that portion alleged on page 41 of the amended bill, this answering defendant denies that by reason of the facts and/or circumstances above stated, and/or as alleged in said amended bill, and/or for any other reason, plaintiff's property, under the rate of fare now being charged, and/or collected, has, at least, or otherwise, for the years 1926 and 1927, been confiscated in the minimum, or otherwise, aggregate amount of $4,700,000; and denies that plaintiff's property is now being confiscated at the continuing, or other, rate of not less than $7,000.00 per day, and/or any other sum; and denies that it has been shown in said amended bill of complaint, and/or otherwise, that the Commission has failed, and/or refused to grant plaintiff the relief to which [fol. 311] plaintiff is entitled under the law; and denies that unless relief is accorded by this court, plaintiff's property will continue to be confiscated in a constantly, or otherwise increasing, or otherwise, daily amount;

Further answering said Paragraph, this answering defendant denies that the rates of fare set forth in said Exhibit "G" are just, and/or reasonable, and/or are no more than adequate, and/or compensatory; and denies that the same, if charged, and/or collected, will not earn a fair return of 8% on the fair, and/or reasonable value of plaintiff's property devoted to the public service; and denies that there is any acute emergency with which plaintiff is confronted; and denies that there has been or there will be any confiscation of plaintiff's property.

XVI

Answering Paragraph XIX, and particularly that portion thereof appearing on page 44 of the amended bill, this answering defendant denies that the last legislative function of rate making has under the laws of this state been

exhausted by plaintiff by its application for a rehearing on said Decision, and/or Order No. 19521, and/or the Commission's denial thereof; and denies that by reason of the fact, and/or circumstances set forth in this, or any other Paragraph, plaintiff has no plain, and/or speedy, and/or adequate remedy at law; and denies that there is any daily, or other, and/or continuing, or other, and/or ever-increasing, or other, confiscation of plaintiff's property by any existing, or other rates; and denies that the existing rates are confiscatory; and denies that there is any injury, and/or confiscation; and denies that there is any irreparable injury; and denies that plaintiff cannot obtain relief to which it is entitled, except for the intervention of a federal court of equity.

[fol. 312]

XVII

Answering Paragraph XX, and particularly that portion of page 44 of the amended bill, this answering defendant denies that the rates of fare set forth in Exhibit "G" are just, and/or reasonable, and/or only compensatory rates; and denies that the present rates of fare existing are confiscatory rates; and denies that to be forced to continue in effect, and/or to charge, and/or to collect the said present existing rates of fare would result in submitting to a continuing confiscation of plaintiff's properties, and/or be without just compensation, and/or be without due process of law, and/or be without the equal protection of the law, and/or be all in violation of plaintiff's rights under the Constitution of the United States.

Answer of Defendant City of Los Angeles to the Second Cause of Action

XVIII

Answering Paragraph XXI, this answering defendant realleges and adopts its answers to Paragraph I to XX, both inclusive, of the amended bill of complaint, with the same force and effect as if the same were herein again repeated and set out, as its answer to said paragraph.

XIX

Answering Paragraph XXII, this answering defendant denies that said decision and/or order No. 19521 of the Commission is arbitrary and/or confiscatory and/or void; and denies that it is more, or otherwise, specifically alleged and/or shown subsequently in said amended bill of complaint to be arbitrary and/or confiscatory and/or void.

Further answering said paragraph, this answering defendant denies that by requiring plaintiff to continue to charge and/or collect the then and/or now existing rates of [fol. 313] fare said decision and/or order was, and/or is, and/or will continue to be confiscatory of plaintiff's property, and/or deprived, and/or does now deprive, and/or if permitted to stand, will continue to deprive plaintiff of its property without just compensation, and/or without due process of law; and/or has denied, and/or does now deny, and/or will continue to deny to plaintiff the equal protection of the law; and denies that all of this is in violation of the Constitution of the United States.

Further answering said paragraph, this answering defendant denies that said decision and/or order is arbitrary and/or is contrary to the evidence, and/or is without support in the record.

Further answering said paragraph, this answering defendant denies that said decision and/or order deprives plaintiff of a fair and/or reasonable and/or compensatory return upon the fair value of its property used and/or useful in the public service.

Further answering said paragraph, this answering defendant denies that said decision and/or order fails to find and/or establish the fair value of plaintiff's property used and/or useful in the public service.

Further answering said paragraph, this answering defendant denies that said decision and/or order fails to allow plaintiff for necessary and/or reasonable operating expenses for the services now given and/or necessary in the future to be given by it.

Further answering said paragraph, this answering defendant admits that said decision and/or order fails to establish any rate of fare to be charged by plaintiff, and admits that said decision and/or order fails to authorize plaintiff to put into effect and to charge and collect any

different fare from that now being charged by it; but de-
[fol. 314] nies that said decision and/or order fails to permit plaintiff to charge and/or collect any just and/or fair and/or reasonable rates and/or returns which will enable plaintiff to earn the cost of service, consisting of adequate and/or reasonable operating expenses, including depreciation and/or taxes, and/or a fair return upon the fair and/or reasonable value of its property used and/or useful in the public service.

XX

Answering Paragraph XXIII, this answering defendant denies that said decision and/or order No. 19521 is arbitrary and/or confiscatory and/or void in and/or because of any facts found therein, and/or for the reason that a reasonable rate base to be used for the purpose of computing a fair return upon the operative property of this Company is the sum of $42,000,000.

Further answering said paragraph, this answering defendant denies that said finding is arbitrary and/or confiscatory and/or contrary to the evidence and/or without support in the record before the Commission; and denies that such rate base of $42,000,000 is confiscatory and/or erroneous and/or grossly inadequate and/or an excessive diminution of the fair and/or reasonable value of plaintiff's property used and/or useful in the public service.

Further answering said paragraph, this answering defendant denies that said rate base of $42,000,000 so found by the Commission to be the reasonable rate base to be used in computing a fair return upon plaintiff's property is based and/or predicated upon, and/or the Commission, in arriving at said figure, proceeded and/or acted upon the fundamentally, or otherwise, erroneous, or otherwise, theory that the controlling element in the valuation of plaintiff's property was its historical reproduction cost without any allowance for working capital and/or going value and/or development cost, rather than upon the fair and/or reasonable value of plaintiff's property devoted to the public use at the time of the inquiry.

[fol. 315] Further answering said paragraph, this answering defendant denies that, notwithstanding the facts alleged in lines 27 to 32, of page 46, and the facts alleged

in lines 1 to 22, inclusive, of page 47, none of which facts are hereby admitted, the Commission has discarded and/or disregarded all of said, or any other, evidence; and denies that the figure $42,000,000 is, and/or that the record shows it to be, simply the rounded-off, historical reproduction cost figure as of December 31, 1926; and denies that the estimate set forth on page 48 of the amended bill of complaint is an arbitrary and/or unlawful estimate of the Commission Engineer.

Further answering said paragraph, this answering defendant denies that there was, and/or is now, evidence in the record before the Commission to support said Finding No. 1, except the figures shown in Table No. 12 set forth on page 48; and denies that the figures contained in said Table No. 12 were, and/or are, arbitrary and/or erroneous and/or incorrect and/or unlawful, and/or were, and/or are not any evidence of the then present value of plaintiff's operative property, in that said figures did not, and/or do not, take into account and/or make any allowance for working capital and/or going concern and/or development cost and/or franchise value, and/or the so-called "unagreed items" referred to in said joint report, and/or for any other reason and denies that in said figures certain of plaintiff's overhead allowances were and/or are arbitrarily reduced over $1,000,000 from the figures agreed upon therefor in said joint report.

XXI

Answering Paragraph XXIV, this answering defendant denies that said decision and/or order No. 19521 is arbitrary and/or confiscatory and/or void in the fact alleged to be found therein, as set forth on page 49.

Further answering said paragraph, this answering defendant denies that said finding is arbitrary and/or incorrect and/or misleading and/or confiscatory and/or that the [fol. 316] estimated financial results therein referred to are not fairly stated; and denies that said finding and/or said results are contrary to the evidence and/or without support in the record.

Further answering said paragraph, this answering defendant alleges that, notwithstanding the facts alleged in said paragraph, commencing with line 14 to line 29, page

49, which facts are not hereby admitted, this defendant denies that the Commission, in said proceeding (Application No. 13323), in order to use its Assistant Engineer's valuation figure of historical reproduction cost, has arbitrarily and/or erroneously and/or unlawfully figured the allowance for depreciation of plaintiff's operating expenses on the sinking fund basis, based upon historical reproduction cost and/or not upon reproduction cost new, and/or has chosen that basis for reflecting the alleged financial results of plaintiff's operations for the year 1927; and denies that the same clearly appears from the record and is set forth in the finding set forth on page 49; and denies that all of said matters are clearly, or otherwise, apparent from the estimate compiled by the Commission's present engineer and offered in evidence in this proceeding (Application No. 13323), as set forth and alleged in Paragraph XIV and/or as set forth in the tables on pages 50 and 51; and denies that the estimate compiled by the Commission's present engineer is arbitrary and/or unlawful.

Further answering said paragraph, this answering defendant denies that in this connection, or otherwise, there was, and/or is, no evidence in the record before the Commission in support of said Finding II, and/or the financial results shown therein, except only the estimate of the Commission Engineer set forth in said Table No. 13; and denies that said estimate is, or was, arbitrary and/or erroneous and/or incorrect and/or unlawful; and denies that said estimate is not lawful and/or any evidence of the then fair value of plaintiff's operative property, for the reasons [fol. 317] set forth in said paragraph, and/or any other reasons.

Further answering said paragraph, this answering defenndant denies that said estimate failed to take into consideration and/or to make any allowance for working capital and/or going value and/or development cost and/or the so-called "unagreed items" referred to in the joint report.

Further answering said paragraph, this answering defendant denies that said estimate arbitrarily and/or without reason and/or explanation and/or justification and/or cause reduces certain of plaintiff's overhead allowances more than $1,000,000 below the figures agreed upon heretofore in the joint report.

Further answering said paragraph, this answering defendant denies that in figuring depreciation on its property on the straight-line method, plaintiff has always been controlled therein by actual physical inspection of its various properties; denies that its evidence before the Commission on the question of depreciation as applied both to valuation and/or to operating expenses was upon said straight-line method based on actual physical examination of the properties; and denies that the depreciated valuation in said joint report was also on the straight-line method based likewise on actual physical inspection of the properties; and denies that since said joint report no physical examination of plaintiff's property to determine the extent of depreciation thereon has been made by any of the engineers of the Commission and/or of the City of Los Angeles, and/or any person other than plaintiff's engineers; and denies that such figures as were introduced in evidence by the Commission's and/or the City's Engineers on and/or involving depreciation were, and/or are, purely theoretical and/or based solely upon theory and/or conjecture; and denies that in using the five per cent. sinking fund method of computing the amount to be allowed for depreciation in plaintiff's annual operating expenses the Commission acted [fol. 318] upon the fundamentally and/or inherently erroneous principle that property theretofore depreciated on the straight-line basis can and/or should be restricted in its allowance for annual operating expenses to depreciation figured on the five per cent. sinking fund basis.

XXII

Answering Paragraph XXV, this answering defendant denies that decision and/or order No. 19521 is arbitrary and/or confiscatory and/or void in that it finds as a fact the matters subsequently alleged in said paragraph.

Further answering said paragraph, this answering defendant denies that the finding of fact set forth on page 53 is contrary to the evidence and/or without support in the record; and denies that it is based upon, and/or that the alleged average rate of return therein set forth is taken from, the table in the concurring opinion of Commissioner Carr, set forth on page 53 of the amended bill.

Further answering said paragraph, this answering defendant denies that said finding and/or said table are arbitrary and/or inaccurate and/or erroneous and/or directly contrary to the facts and/or contrary to the evidence and/or without support in the record, in that all of the figures set forth in said Table No. 14, under the headings "Approximate Value on Basis of Value found for 1927", and/or "Net Income Adjusted for Five Per Cent Sinking Fund Depreciation", are based and/or predicated upon and/or taken from estimates of the Commission Engineer Tables 12 and 13 set forth in the amended bill of complaint); and denies that the estimates contained in Tables 12 and 13 are arbitrary and/or unlawful; and denies that the said estimates were, and/or are, not lawful and/or any evidence of the then present value of plaintiff's operative property.

[fol. 319] Further answering said paragraph, this answering defendant denies that the said "approximate value" figures are based and/or predicated upon any fundamentally, or otherwise, erroneous, or otherwise, theory that historical-reproduction cost is the controlling element in the valuation of plaintiff's property; and denies that said "net income" column is based and/or predicated upon the said fundamentally, or otherwise, erroneous, or other, theory that sinking fund depreciation can now be applied to plaintiff's property, which has always been depreciated on the straight-line basis; and denies that such, or other 'approximate value" figures for each of the fifteen years shown in said table are arbitrary and/or unlawful and/or directly contrary to the facts and/or contrary to the evidence and/or without support in the record.

Further answering said paragraph, this answering defendant denies that said finding and/or said (return by years) table is further, or otherwise, contrary to the evidence, and/or without support in the record; and denies that there is no testimony and/or evidence of any kind whatsoever in the record before the Commission concerning any of the years specified therein prior to the year 1922, and/or that there is no testimony and/or evidence whatsoever in the record as to any of the figures set forth in said table prior to said year 1922.

Further answering said paragraph, this answering defendant denies that said finding and/or the figures in Table No. 14 are further, or otherwise, contrary to the facts and/or the evidence, and/or without support in the record; and denies that during each and/or all of the years purported to be covered by said table it rendered to the Commission, in accordance with the requirements of the Public Utilities Act, annual reports of its operating revenues and/or expenses, in which it set forth, respectively, its actual net income for each of said years; and denies that the amounts set forth in said annual reports are true and/or [fol. 320] correct; and denies that for each of said years plaintiff's actual net income was substantially less than the respective amounts shown on the Commission's said table, and/or that said actual net income for said years is shown on Table No. 15 set forth in the amended bill.

Further answering said paragraph, this answering defendant denies that the concurring Commissioner, in said table, and/or without justification therefor, and/or without any testimony and/or evidence justifying and/or supporting such action, has arbitrarily, or otherwise, substantially, or otherwise, reduced said actual operating expense figure for each of said years by including therein a 5% sinking fund depreciation allowance based on historical-reproduction cost, and/or has thereby shown in said table "net income" and/or "per cent return" figures which are not in accordance with the facts, and/or which are not in accordance with the agreed joint report, and/or which are not in accordance with the methods, which until now, the Commission has required; and denies that they are substantially, or otherwise, greater in each instance than the actual figures therefor and/or the figures in evidence before the Commission by the testimony of both plaintiff's witnesses and/or the Commission's accountant Hughes.

Further answering said paragraph, this answering defendant denies that said Finding No. III is further, or otherwise, arbitrary and/or inaccurate and/or misleading and/or confiscatory; and denies that the Commission has arbitrarily, or otherwise, chosen from said Table No. 14, as representative and/or as average of plaintiff's return, the five years which would include, according to said table, the two years in which plaintiff is purported to have earned

its greatest return, and/or has arbitrarily excluded the year 1927, in which, according to said table, plaintiff's return was only 4.9% and denies that the Commission has failed to recognize and/or find as a fact that plaintiff's average [fol. 321] rate of return has, for the five years ending December 31, 1927, been only 6.2% and/or has for the entire fifteen years from 1913 to 1927, incl., been only 6% on such rate base, and has for the last seven years been only 6.6% on said rate base.

Further answering said paragraph, this answering defendant denies that the uncontradicted evidence in the record before the Commission shows that plaintiff's actual net income available for return, after actual operating expenses for the five-year period ending December 31, 1926, and/or computed on the annual rate bases shown in the joint report, without any allowance whatever for working capital and/or going value and/or development cost, and/or without reasonable and/or adequate allowance for overhead expenses, averaged less than 5.8% per year on such valuation; and denies that upon the minimum fair value of plaintiff's operative property and/or upon actual operating revenues and/or expenses for each of said years, plaintiff, in the five-year period ending December 31, 1927, earned an average return of only 4.28%, and/or failed to earn a fair return of 8% over such five-year period in the aggregate amount of $8,269,645. or any other sum; and denies that those matters are fully shown in Table No. 16 set forth in the amended bill.

XXIII

Answering Paragraph XXVI, this answering defendant denies that said decision and/or order No. 19521 is, and/or shows on its face that it is, arbitrary and/or confiscatory and/or void, for the reason of the fact therein found set forth on page 58, or any other reason; and denies that said Finding IV is contrary to the evidence and/or without support in the record before the Commission, for the reasons set forth in Paragraphs XIV and XXIV of the amended bill, and/or for any other reason; and denies that the rate of return therein found for the year 1927, to-wit: 4.9%, was arbitrarily, or otherwise, taken from the Commission Engineer's estimate, Table No. 13; and denies that the

[fol. 322] Commission Engineer's said estimate is arbitrary and/or erroneous and/or unlawful; and denies that said finding was based solely upon said Engineer's "historical-reproduction cost 5% sinking fund fund basis" figure of $41,914,052 rounded off to $42,000,000.

Further answering said paragraph, this answering defendant denies that the rate base of $42,000,000 found by the Commission in its Finding No. I, is erroneous and/or is incomplete, and/or is inadequate; and denies that the Commission's use of sinking fund depreciation in said proceeding was erroneous and/or unfair and/or arbitrary; and denies that the estimate of operating income was erroneous and/or arbitrary and/or excessive; and denies that the evidence of the Commission's own Chief Engineer, set forth in said Table No. 13, shows that for the year 1927 plaintiff, under its existing rate of fares, failed, by the sum of $715,840. of earning a return of 6% on said rate base of $42,000,000. and/or failed, by the sum of $1,227,245, of earning a return of 7% thereon and/or by the sum of $1,738,650 of earning a return of 8% thereon.

Further answering said paragraph, this answering defendant denies that the Commission's said finding No. IV shows on its face that the present rates of fare are confiscatory of plaintiff's property to the extent of at least a million and a quarter dollars per year, or any other sum and/or at the rate of approximately, or otherwise, the sum of $3,500 per day, or any other sum.

Further answering said paragraph, this answering defendant denies that there was no evidence before the Commission that for the year 1926 the actual operating income of plaintiff available for return was $1,282,558; and denies that said figure is equivalent to a return of only 3%; and denies that the only other evidence before the Commission on that question was the testimony of its own accountant Hughes (Table No. 15); and denies that for the year 1926 plaintiff's operating income average for return was $1,291,980; and denies that said figure was equivalent to a return of only 3.08%.

[fol. 323] XXVI

Answering paragraph XXVII, this answering defendant denies that the decision and/or order No. 19521 is arbitra-

ry and/or confiscatory and/or void, by reason of Finding No. V found therein and set forth in the said amended bill, or for any other reason.

Further answering said paragraph, this answering defendant denies that said finding of fact in its first two sentences, or otherwise, is arbitrary and/or inaccurate and/or misleading and/or contrary to the facts and/or the evidence, and denies that its last sentence, or any other part thereof, is arbitrary and/or erroneous and/or confiscatory and/or contrary to the facts and/or the record.

Further answering said paragraph, this answering defendant denies that said finding refers only to the unsupported opinion of the Commission's Chief Engineer, A. G. Mott, that plaintiff's operating costs could be greatly reduced by the one hundred per cent use on its system of cars operated by one man.

XXV

Answering Paragraph XXVIII, this answering defendant denies that said decision and/or order No. 19521 is arbitrary and/or confiscatory and/or void, in its finding of fact No. VI, set forth on page 61 of the amended bill, or for any other reason; and denies that said finding is arbitrary and/or inaccurate and/or contrary to the facts and/or the record, and denies that said finding assumes and/or is is based and/or predicated upon the assumption that if plaintiff were authorized to charge and/or collect a seven cent fare, with four single-fare tokens for twenty-five cents, as applied for to the Commission in said Application No. 13323, its service and/or operating expenses under said increased rates would remain the same as now exist under its present basic fare of 5c; and denies that the record shows that the putting in of universal transfers would greatly increase plaintiff's operating expenses.

[fol. 324] Further answering said paragraph, this answering defendant denies that by reason of any inadequate and/or insufficient revenue derived from its present rate of fares it was compelled, during the year 1927, to curtail its normal operating expenses, exclusive of taxes, to the sum of $11,062,013, or any other sum, and/or approximately or otherwise $250,000 below normal, or any other sum

below normal; and denies that if the rates applied for to the Commission in said Application No. 13323 had been authorized by the Commission and/or plaintiff had continued such curtailment of its operating expenses under said increased rates, and/or without any allowance for the cost of installation of universal transfers demanded by the Commission, and/or without allowance for any increased service whatsoever, its operating income available for return for said year would have been $3,352,035; and denies that said sum is equivalent to a return of only 7.13 per cent on the minimum present fair value of plaintiff's property devoted to the public use.

Further answering said paragraph, this answering defendant denies that if said increased rates had been authorized and/or put into effect, its uncurtailed operating expenses, even without taking into account the cost of installation of said universal transfer plan, as required by the Commission, would have been $13,170,477; and denies that said figure would leave a net income available for return for said year 1927 of $2,486,613; and denies that said sum would be a return of only 5.29 per cent on the minimum present value of plaintiff's property devoted to the public service.

Further answering said paragraph, this answering defendant denies that the table set forth on page 63 of the amended bill shows plaintiff's estimated operating results for the year 1927 under the rates applied for to the Commission, and/or in the amended bill requested, and/or shows the rate of return and/or the deficiency in earnings below 8% on plaintiff's property, both under the Commission's rate base of $42,000,000 and/or under the present fair value of plaintiff's property under both actual curtailed opera-
[fol. 325] tions and/or under normal uncurtailed operations as increased by additional service due to universal transfers.

Further answering said paragraph, this answering defendant denies that if under normal operating conditions said basic fare of 7¢ with 4 single-fare tokens for 25¢, as applied for to the Commission, and/or as in the amended bill requested, were in effect and/or being charged and/or collected, plaintiff's operating income available for return, for the period ending twelve months after said rates

became effective, would be the maximum sum of $2,641,-068; and denies that said sum would be equivalent to a return of only 5.62% on the present minimum fair value of plaintiff's property devoted to the public use; and denies that the table set forth on page 65 sets forth the details of such estimate.

XXVI

Answering Paragraph XXIX, this answering defendant denies that the Commission, in making and/or entering said decision and/or order No. 19521, and/or in refusing to permit plaintiff to put into effect and/or to charge and/or to collect rates of fare greater than it is now collecting, wholly disregarded the clear, or other, intent of the laws of the State of California, as set forth in said Public Utilities Act (Section 32), to the effect that the rates of fare of plaintiff and/or other public utilities shall at all times be just and/or reasonable and/or sufficient; and denies that said decision and/or order has prevented the plaintiff from charging and/or collecting just and/or reasonable and/or sufficient and/or compensatory and/or non-confiscatory rates of fare; and denies that the Commission in making and/or entering said decision and/or order did not act upon findings based upon the evidence and/or upon any sustaining proof adduced at the hearings in said proceeding (Application No. 13323); and denies that the allegations and matters set forth in the amended bill show that the Commission in making and/or entering said de-
[fol. 326] cision and/or order did not act upon findings based upon the evidence and/or upon any sustaining proof adduced at the hearings in said proceeding (Application No. 13323); and denies that the Commission acted arbitrarily and/or without any fair and/or proper consideration of the evidence and/or acted without any proper and/or adequate proof to support its said findings and/or said decision and/or order, and/or acted without any authority of law; and denies that the Commission acted in utter, or other, disregard and/or defiance, or otherwise, of its powers and/or duties under said Public Utilities Act, and/or of the rights of the plaintiff under the Fifth and/or Fourteenth Amendments to the Constitution of the United States.

-XVII

Answering Paragraph XXX, this answering defendant denies that immediate and/or irreparable injury and/or loss and/or damage will result to plaintiff, unless a temporary restraining order is granted without notice to the Commission, or otherwise; and denies that it is alleged and/or shown in said amended bill that immediate and/or irreparable injury and/or loss and/or damage will result to plaintiff unless a temporary restraining order is granted without notice to the Commission, or otherwise.

Further answering said paragraph, this answering defendant denies that the plaintiff's present rates of fare and/or the said decision and/or order No. 19521, or any of them, are illegal and/or confiscatory and/or void; and denies that the plaintiff is entitled to charge the rates proposed in its amended bill of complaint; and denies that the rates proposed in its amended bill are just and/or reasonable and/or only compensatory rates; and denies that the plaintiff was legally entitled to charge and/or collect and/or receive any different rates of fare than it is charging.

[fol. 327] Wherefore Intervenor and Defendant, City of Los Angeles, prays that this action may be dismissed as against it, and for costs in its behalf expended.

Jess E. Stephens, Jess E. Stephens, City Attorney; Herman Mohr, Herman Mohr, Deputy City Attorney, and James L. Ronnow, James L. Ronnow, Deputy City Attorney, Solicitors for Intervener and Defendant, City of Los Angeles, 4th Floor, City Hall, Los Angeles, Calif.

[fol. 328] Received copy of the within document August 6, 1928—Gibson, Dunn & Crutcher, Per W. — Jess E. Stephens, City Attorney, Fourth Floor, City Hall, Los Angeles, California, Attorney for City of Los Angeles,—

[File endorsement omitted.]

[fol. 328-a1] IN UNITED STATES DISTRICT COURT

(The page numbers at the left are taken from the printed volume of affidavits filed with the District Court by Los Angeles Railway Corporation.)

PORTIONS OF AFFIDAVITS OF LOS ANGELES RAILWAY CORPORATION IN SUPPORT OF BILL OF COMPLAINT AND OF MOTION FOR PRELIMINARY INJUNCTION (IN NARRATIVE FORM)

1 George J. Kuhrts, of Los Angeles, California, President and General Manager of Los Angeles Rail-
2 way Corporation, a civil engineer by profession. For fourteen years, from 1902 to 1916, chief engineer of the Los Angeles Railway Corporation and its predecessor companies; appointed assistant general manager in 1916 and general manager and Vice-President in 1918; elected President and general manager in July, 1927, which position he still holds. He has been continuously in the employ of plaintiff or its predecessor companies for more that twenty-five years and is intimately acquainted with plaintiff's construction and with its financial, operating and service requirements. He is familiar with plaintiff's application to the California Railroad Commission for an increase of rates, designated Application No. 13323, and with the Railroad Commission's decisions in said proceeding made on June 20, 1927 (decision and order No. 18531); on March 26, 1928 (decision and order No. 19521), and on April 23, 1928 (decision and order No. 19657).

(1) With Reference to Plaintiff's Financial Condition

Plaintiff on July 22, 1924, filed its application with the Railroad Commission for an order authorizing a reorganization and refinancing of said plaintiff's property, and that on September 25, 1924, plaintiff filed its amended application with said commission for a similar purpose; said two applications having been designated by said commission [fol. 328-a2] Application No. 10303. Said Application No. 10303 was made, and deponent so testified in the hearing on said application before said commission on August 15th,
3 1924, for the purpose of making possible new and additional financing in order to develop and extend plaintiff's street railway and transportation system.

Plaintiff's existing encumbrances of record are closed mortgages and all of the bonds that can be issued under said mortgages have been issued and plaintiff's bonding capacity is exhausted. Plaintiff's said Application No. 10303 has been pending before said Railroad Commission since July 22, 1924, and no decision has as yet been rendered by said commission.

Avers on information and belief that plaintiff cannot expect or hope to secure said commission's permission for the issuance of new securities and for plaintiff's imperative financial reorganization until plaintiff can make its showing to the commission of sufficient and adequate earnings to provide for and meet the fixed charges upon said new securities, and that plaintiff cannot possibly make such showing of sufficient and adequate earnings until plaintiff is permitted and authorized to charge and collect fair and reasonable rates for the transportation service it renders and rates that will produce a fair and reasonable return on the fair value of plaintiff's property used and useful in the service of the public.

For a number of years past and pending the fixing of such fares and reasonable rates, plaintiff has been under the necessity of financing its most urgent, unavoidable and imperative capital requirements by means of unsecured notes and loans, and such temporary and inadequate financing until May, 1927, was possible only because of plaintiff's ability to borrow by means of unsecured loans from H. E. Huntington, the principal owner of plaintiff's common stock. After the death of said H. E. Huntington in May, 1927, and because of plaintiff's inadequate revenues and earnings, and its inability under existing rates of fare to [fol. 328-a3] earn a reasonable or fair return upon the minimum value of its property, plaintiff has been unable to finance itself and to secure any new capital for its urgent and necessary capital expenditures.

4 Unless plaintiff is promptly and speedily placed in a position whereby through the collection of just and reasonable rates it can earn a fair and reasonable return upon the fair value of its property, and whereby it can promptly and speedily escape the long continued confiscation of its property, plaintiff will be compelled to suffer a steadily increasing and irreparable loss and confisca-

tion of its property and that such loss and confiscation is now taking place, and has been taking place for more than two years past, on the average over such period of not less than $7,000.00 per day.

(2) With Reference to Curtainment of Normal Operating Expenses

Avers that by reason of the failure of the California Railroad Commission to grant plaintiff reasonable and just rates of fare, plaintiff, since the denial by the commission on June 20, 1927, of its supplemental application for emergency and interim rates, has been under the necessity, by reason of its inadequate earnings, to curtail and reduce its operating expenses in every possible manner, and deponent in June and July, 1927, issued instructions for such reduction and curtailment of operating expenses to all departments of plaintiff's railway. That in compliance with such instructions, plaintiff's operating expenses in the last half of 1927 were reduced through curtailment of service and through reduction of shop and maintenance forces by an amount of approximately $250,000; that similar curtailment of normal and necessary operating expenses is continuing in the present year. Such curtailment and reduction is most undesirable both from the standpoint of maintaining a reasonably high condition and value of plaintiff's property and also from the standpoint of the effect on the service plaintiff renders to the public. Such curtail-
[fol. 328-a4] ment merely amounts to a temporary defer-
ring of necessary maintenance and necessary renew-
5 als, and if continued must necessarily and inevitably result in further loss and destruction and further confiscation of plaintiff's property and investment and in deterioration of the service to the public.

(3) With Reference to One-man Car Operation

The California Railroad Commission in its decision and order No. 19521 states that plaintiff's operating methods might be so changed as to result in large reductions in the cost of operation and still enable the company to render efficient and adequate service; and further that plaintiff's management has made no effort to take advantage of these

possible economies. The commission does not say in said decision what changes in plaintiff's operating methods it has reference to. Said reference, according to the record in the case before the commission evidently applies, however, to the proposal of the commission's chief engineer, A. G. Mott, that plaintiff should put into effect on its transportation system in the city of Los Angeles "100% one-man car operation." Deponent, by reason of his uninterrupted connection and familiarity with plaintiff's property and operations in an engineering and executive capacity for a period of more than twenty-five years, and further by reason of his familiarity and knowledge of street railway operations in other large cities in the United States, states that the attempt to inaugurate 100% one-man car operation in the city of Los Angeles under the extreme conditions of traffic and congestion existing in said city would be inexcusably poor management, and would be impracticable and unworkable and in entire opposition to the desires and wishes of the public served by plaintiff and of the authorities of the city of Los Angeles. Said opposition on the part of the city authorities has been formally and officially expressed by resolution of the Board of Public Utilities and [fol. 328-a5] Transportation of the city of Los Angeles opposing and condemning such proposed one-man car operation.

6 (4) With Reference to Plaintiff's Long Continued Policy of Cooperation with City of Los Angeles and Plaintiff's Purpose to Furnish the Best Possible Transportation Service at the Lowest Reasonable Cost

States that it is common knowledge in the city of Los Angeles and in the territory served by plaintiff's lines, and the record in the rate proceeding before the commission so shows, that for more than twenty-five years it has been the continuous and unfaltering policy of plaintiff and its management to co-operate with the city of Los Angeles and its authorities to the fullest possible extent in providing the city with satisfactory and adequate street railway and motor bus transportation. That it has been plaintiff's unchanged policy to furnish such transportation at the lowest

possible cost. It is because of this policy that plaintiff's principal owner, H. E. Huntington, and plaintiff's management ever since the World War, even in the face of greatly increased expenses of all classes of labor and materials and in spite of the declining value of the dollar, have made every effort to maintain the basic 5c fare.

Avers on information and belief that there has not been for a number of years past and there is not now a single street railway system in the United States that has furnished a transportation service with a 5c fare that in character, extent, transfer and school children privileges, speed and average length of haul can compare with the service rendered by plaintiff to its patrons in the city of Los Angeles.

States that plaintiff has not sought, in the rate proceeding before the commission, and it does not now seek, a rate of fare and a return upon its property that will enable [fol. 328-a6] plaintiff to make good any of the losses of the past, or any of the past confiscation of its property plaintiff has suffered, and that plaintiff now merely seeks to terminate at the earliest possible moment the large lo
continually being suffered by it by reason of inade-
7 quate and unreasonably low rates of fare, and to terminate the continued confiscation of its property now amounting, when computed on the minimum present value of plaintiff's operative property, and being the difference between the amount of earnings available for fair return under the present rates under normal operation and the amount of earnings that will be available for fair return under plaintiff's proposed rates under normal operation, to not less than $7,000 per day.

8 Affidavit of Phil B. Harris

Chief engineer of plaintiff, Los Angeles Railway Corporation. Has been engaged in engineering for twenty-seven years and has had experience in the construction,
maintenance and operation of steam railroads and
9 street railways. From 1910 to 1918 was superintendent in charge of maintenance and construction of buildings, tracks and roadway of plaintiff's electric street railway and during that time constructed or recon-

structed most of the tracks of the system. From 1919 to the present time has been chief engineer of plaintiff and has charge of all tracks, roadways, bridges, buildings, shops, power-houses, overhead and transmission lines, and all rolling stock and automotive equipment. This includes the design of all tracks, bridges, buildings and their construction and maintenance; the design, construction and maintenance of all cars and other rolling stock; the design, construction and maintenance of all overhead lines, power distribution lines and power stations.

In plaintiff's rate proceeding before the California Railroad Commission, entitled Application No. 13323, he [fol. 328-a7] prepared, testified to and introduced in evidence a statement (Exhibit No. 41), designated, "Total Expenditures for Renewals and Additions and Bet-
10 terments for the Next Three Years, 1927-1929." Said statement is shown hereunder as Table A:

[fol. 328-a8] 10 Table A

Total Expenditures for Renewals and Additions and Betterments for the Next Three Years, 1927-1929

	Estimated capital expenses	Estimated operation charge depreciation	Estimated total expenditures
#1. Way & Structures:			
1. Track reconstruction.....	$1,262,675.00	$1,527,986.00	$2,790,661.00
Special work renewals....	.....	450,000.00	450,000.00
Removals	.....	7,663.00	7,663.00
2. Extensions, including special work.....	751,703.00	.....	751,703.00
3. New Viaducts.....	688,084.00	79,218.00	767,302.00
4. Land for Dump Tracks...	75,000.00	.....	75,000.00
5. Renewals, Lighting Charges, Divisions 1, 2, 3, 5.....	20,700.00	20,700.00	41,400.00
6. 16th Street Yards (Bus and Automobile Headquarters) Extensions, additions and Betterments	422,762.00	.....	422,762.00
7. South Park Shops, Additions to property.....	37,594.00	.....	37,594.00
8. Electric Distribution
11 system, Positive & Negative Feeders..	125,735.00	.....	125,735.00
1500 volt high lines.....	131,147.00	.....	131,147.00
Poles and fixtures.....	38,227	219,210.00	257,437.00
9. Transformers & Motors for shop power and lights..	17,865.00	.....	17,865.00
10. Office equipment.....	6,000.00	.....	6,000.00
11. Roadway machinery & tools	39,855.00	2,000.00	41,855.00
	$3,617,347.00	$2,306,777.00	$5,924,124.00

	Estimated capital expenses	Estimated operation charge depreciation	Estimated total expenditures
#2. Equipment:			
1. 100 new passenger cars replacing 100 old cars $8,000 per car to capital.	800,000.00	550,000.00	1,350,000.00
2. Miscellaneous & service equipment	45,430.00	.....	45,430.00
3. Elec. Equip. of cars, motor housing changes and fare boxes	80,220.00	34,850.00	115,070.00
4. Buses			
45 single deck buses at $8,700	391,500.00	.....	391,500.00
30 double deck buses at $11,500	345,000.00	.....	345,000.00
5. Shop equipment	68,057.00	3,000.00	71,057.00
	$1,730,207.00	$587,850.00	$2,318,057.00
[fol. 328-a9] 12 #3. Power:			
1. Present Substations Additions & Betterments	$390,036.00	$217,267.00	$607,303.00
2. Supervisory control system	84,375.00	.....	84,375.00
3. New Substation "S" Manchester and Broadway. 1,000 K. W. Set and 34 feeder panels, building and land	108,940.00	.....	108,940.00
4. New Substation "I" Inglewood. 2-500 K. W. sets, 2 feeder panels, building and land	76,465.00	27,000.00	103,465.00
5. New Substation "R" West Adams and Vineyard. 1,000 K. W. Set, 4 feeder panels, building and grounds	116,740.00	.....	116,740.00
	$776,556.00	$244,267.00	$1,020,823.00
Grand Total	$6,124,110.00	$3,138,894.00	$9,263,004.00

NOTE.—There will be some minor additional charges to Maintenance which cannot be definitely estimated beforehand and which are intended to be included in exhibits #21 and #22.

13 [fol. 328-a10] Said Table A, as of March, 1927, listed the necessary and minimum expenditures to be charged to capital and to depreciation, for betterments, additions and renewals of plaintiff's property during the three years, 1927 to 1929, on the assumption that plaintiff would be financially able to incur these normal, necessary and minimum expenditures. All of the expenditures shown in Table A are normal and necessary expenditures and items 1 and 2 under the heading Way & Structure (1.

Track reconstruction, Special work renewals, Removals and 2. Extensions, including special work) were included in Table A in an amount greatly less than the amount demanded and asked by the city of Los Angeles.

By reason of plaintiff's failure to secure an increase in its revenues through an increase in its street car fares, plaintiff was and is unable to carry forward, except to a limited extent, the program of minimum renewals, additions and betterments as shown in Table A. It will be impossible to postpone indefinitely the normal and necessary betterment and renewal program except at a permanent and irreparable loss to plaintiff and a serious impairment of plaintiff's service to the public.

Table B, below, entitled "Total Minimum Expenditures for Renewals, Additions and Betterments for the Next Three Years, 1928, 1929 and 1930 (Prepared in May 1928)" was prepared by me in a manner similar to Table A, above. There is excluded from the items and amounts listed in Table B all expenditures appearing on Table A that have been made by plaintiff in the period intervening between the preparation of the estimates appearing in Table A and the preparation of the estimates appearing in Table B, that is to say, the period between March, 1927, and May, 1928.

By reason of plaintiff's failure to secure an increase in its revenues through and increase in its street car fares, of plaintiff's service to the public.

is to say, the period between March, 1927, and May, 1928.

amounts appearing in Table B, upon instructions of plain-

[fol. 328-a11] reduced and curtailed to an extent

14 where in deponent's judgment and belief they represent the absolute minimum expenditures for the current year 1928, the year 1929 and the year 1930. Table B, therefore, does not represent deponent's estimate of normal expenditures for renewals, additions and betterments for the period covered by said table, but represents an abnormally low estimate of such expenditures dictated by plaintiff's insufficient earnings and lack of funds.

[fol. 328-a12]

Table B

Total Minimum Expenditures for Renewals, Additions and Betterments for the Next Three Years, 1928-1929-1930

(Prepared in May, 1928)

Items	Estimated capital expenditures	Estimated operating charges, depreciation	Estimated total expenditures
#1. Way and Structures:			
1. Track reconstruction	$656,371.00	$674,418.00	$1,330,789.00
Special work renewals	.....	450,000.00	450,000.00
Removals	.....	26,006.00	26,006.00
2. Extensions including special work	820,402.00	.....	820,402.00
3. New viaducts	491,793.00	79,222.00	571,015.00
4. Renewals, lighting changes, Division #3	8,500.00	8,500.00	17,000.00
5. 16th Street Yards (Coach and automobile headquarters) Extensions, additions and betterments	164,866.00	.....	164,866.00
6. Electric distribution system, Positive and neg. feeders	71,658.00	.....	71,658.00
1500 volt high line	30,497.00	.....	30,497.00
Poles and fixtures	29,358.00	126,130.00	155,488.00
7. Office equipment	5,000.00	.....	5,000.00
8. Roadway machinery and tools	5,000.00	2,000.00	7,000.00
	$2,283,445.00	$1,366,276.00	$3,649,721.00
#2. Equipment:			
1. 100 new passenger cars replacing 100 old cars $8,000.00 per car to capital.	$800,000.00	$550,000.00	$1,350,000.00
2. Electric equipment of cars, motor housing changes and fare boxes.	48,520.00	.....	48,520.00
3. Motor coaches and trucks, 43 single deck at $10,766.00	462,938.00	.....	462,938.00
4 trucks	12,700.00	.....	12,700.00
4. Shops and yards	15,860.00	.....	15,860.00
	$1,340,018.00	$550,000.00	$1,890,018.00

Items	Estimated capital expenditures	Estimated operating charges, depreciation	Estimated total expenditures
[fol. 328-a13] #3. Power:			
1. Present substations additions & betterments....	61,375.00	475,286.00	536,661.00
16			
2. Supervisory control system	24,375.00	.....	24,375.00
3. New substation 'R,' West Adams and Vineyard, 1000 Kw. Set, 4 feeder panels, building and grounds	118,740.00	.....	118,740.00
4. New substation 'S,' Manchester and Broadway, 1000 kw. set and 4 feeder panels, building and land	117,940.00	.....	117,940.00
	$322,430.00	$475,286.00	$797,716.00
Grand totals	$3,945,893.00	$2,391,562.00	$6,337,455.00

Based on his intimate knowledge of plaintiff's property and operations, deponent avers that any further curtailment of such necessary and minimum expenditures for renewals, additions and betterments will result in permanent injury and permanent loss to plaintiff's property and service.

17

[fol. 328-a14] Affidavit of Richard Sachse

Consulting engineer of Los Angeles Railway Corporation, plaintiff. Has been engaged in the profession of engineering for twenty-five years and has had experience in the construction and operation of railroad and street railway properties and valuation work, and during the last fifteen years has participated in numerous inquiries and investigations as to service, operating conditions, valuations, rates, construction, operation and traffic matters of various railroads and street railways and other public utili-

18 ties. In 1912 he became assistant engineer of the Railroad Commission of the State of California, holding the position of assistant engineer for two years, 1912-1913. Became assistant chief engineer in 1914 and later in that year chief engineer of the Commission. Was chief

engineer of the California Commission from October, 1914, until February, 1923. While employed by the Railroad Commission, he was engaged as assistant engineer exclusively in valuation and transportation engineering matters. As assistant chief engineer, was in charge of all valuations, including the valuations of steam and electric railroads and in general charge of all transportation matters. As chief engineer, was in charge of the entire engineering department of the Commission, consisting of five divisions, viz., transportation, hydraulic, gas and electric, telephone and telegraph, and general divisions. As chief engineer, gave principal attention to the transportation division of the engineering department and particularly to service valuation and rates. During that period and under instructions of the commission, valuations were made under his direction for rate-fixing purposes, for the issuance of securities, for transfer of properties, for general purposes and in connection with condemnation proceedings, totaling in terms of reproduction cost approximately $625,000,000, including the appraisal of over $200,000,000 steam and electric railroad property.

[fol. 328-a15] Since 1923, has engaged in the practice of consulting engineer in Los Angeles and, as such, has participated in numerous valuation and rate proceedings, involving electric railways and other utilities, and has been consulting engineer for the Los Angeles Railway Corporation, the Pacific Electric Railway Company, the Key System Transit Company, the San Diego Electric Railway, the Honolulu Rapid Transit Company and other utilities. He has also been consulting engineer for the City and County of Los Angeles and for the Public Utilities Commission of the Territory of Hawaii and for the Southern California Telephone Company and the Pacific Telephone and Telegraph Company. He is acquainted with the physical properties, construction, operation, maintenance, rates, traffic and financial condition of plaintiff, and has been so acquainted since 1923. He was in charge of and prepared, or had prepared under his direction, numerous engineering and operating exhibits and testified in plaintiff's rate proceeding before the California Railroad Commission known as Application No. 13323, and in other proceedings of plaintiff before said commission.

In 1913, while assistant engineer of the California Railroad Commission, he made, in behalf of the commission, a valuation in connection with a reorganization proceeding of plaintiff's property, and in 1919, while chief engineer of the commission, he made, in behalf of the commission, another valuation of plaintiff's property in connection with a rate proceeding.

From 1923 to 1925 he participated, as consulting engineer of the Los Angeles Railway Corporation, plaintiff, and the Pacific Electric Railway Company, in the Joint Street Railway Survey of the City of Los Angeles, undertaken and carried forward upon the initiative and under the direction and control of the California Railroad Commission, and in the complaint herein referred to as the "Joint
21 Report." This survey was jointly conducted and a joint report was made by the engineering departments of the California Railroad Commission, the Board [fol. 328-a16] of Public Utilities and Transportation of the city of Los Angeles, the Pacific Electric Railway Company and the plaintiff. Said joint report, consisting of eight volumes, contains a complete inventory and valuation of plaintiff's property and deals in great detail with the plaintiff's history, financial and operating conditions, with service, traffic, rates, and contains recommendations and proposals for future development. Said joint report constitutes Exhibits Nos. 9 and 9a in plaintiff's proceeding before the commission.

He is and has been for many years familiar with the market prices of material and labor entering into the construction and installation and into the operation and maintenance of the various properties used by plaintiff on the transportation system operated by it, and has kept himself currently informed of such prices and changes therein and has from time to time made and is continually making investigations and studies of such prices and conditions and the trends thereof.

He has examined and studied the decisions and orders of the Railroad Commission of the State of California in the above entitled proceeding, made on June 20, 1927 (decision No. 18531), on March 26, 1928 (decision No. 19521), and on April 23, 1928 (decision No. 19657), particularly with reference to the value of plaintiff's property; plaintiff's operating revenues and operating expenses and with ref-

erence to the rate of return and the amount of return available for interest on bonds and other fixed charges, and for net return on the value of plaintiff's operative property, and with reference to plaintiff's methods of operation and the value of the transportation service rendered by plaintiff.

Based upon his experience and upon his knowledge of plaintiff's property, operating conditions, traffic, revenues and expenses, rates and service, he hereby avers:

[fol. 328-a17] (2) With Reference to the Rate of Return

27

Deponent has made detailed studies of the cost of money to various public utilities, including electric railways, in California and elsewhere in connection with plaintiff's rate proceeding before the Railroad Commission and in other proceedings. These studies show, deponent so testified in the proceeding before the commission and deponent now states, that the present cost of money for street railways is in excess of 7% and that a rate of return of less than 7% is below plaintiff's actual present cost of money and must necessarily result in confiscation of plaintiff's property. Deponent believes and states that a rate of not less than 8% upon the fair value of plaintiff's property is a necessary, reasonable and fair rate of return for the following principal reasons:

(a) Assuming that economic conditions permit the charging of rates that will produce a fair return, then the rate of such return must be above the cost of money and above the line of confiscation. The line of confiscation is reached when the rate of return falls below the rate of the cost of money.

(b) If satisfactory transportation service is to be continued, the rate of return must exceed the cost of money by a reasonable margin to allow for the risk attaching to the business and to permit of a reasonable compensation to the owners, over and above the out of pocket cost of rendering the service, including in such cost the actual cost of capital. In the transportation business conducted by plaintiff, and having in mind the past, present and future facts and circumstances surrounding plaintiff's transportation system, a margin above the cost of money of from 1

to 1½ per cent is a minimum and a fair rate of return cannot be less than 8%.

(c) An 8% return for public utilities, including street railways, has been held reasonable and fair for the utilities and the public alike in many rate cases by the California

[fol. 328-a18] Railroad Commission and similarly

28 by other commissions throughout the United States.

In some street railway rate cases commissions have fixed rates that did not net the companies an 8% return for the reason that the economic maximum street railway rate had been reached, or, because of reasons beyond the commission's control, the utility was unable, under any reasonable rates, to earn a fair return.

(d) The economic limit of the rate of fare will not nearly have been reached if the fares proposed by plaintiff are put into effect, or if higher fares are fixed that will allow plaintiff a full 8% return on the fair value of its property.

(e) If a rate of fare is fixed less than the fares herein proposed by plaintiff it will be extremely difficult, if not impossible, for plaintiff to finance future necessary improvements, betterments and extensions, and plaintiff will be forced to adopt a policy of curtailment of service and of retrenchment with an unfavorable and detrimental effect upon the service and upon the business and development of the city of Los Angeles and the other communities served by plaintiff's lines.

32

[fol. 328-a19] (4) With Reference to the Rate of Return Based Upon the Value of Plaintiff's Property as Fixed by the Railroad Commission in Its Decision No. 19521, Dated March 26, 1928

Deponent has examined and studied said decision

33 and order No. 19521 of the commission and avers that the commission's allowance for operating expense in said findings is taken without change from the estimate of A. G. Mott, chief engineer of the commission (Exhibit 64) of financial results based upon his rate base of historical reproduction cost of $41,914,052. In commission's said Exhibit 64 the operating expense estimate consists of three items, i. e.:

"Expense	$9,368,533
Depreciation, 5% sinking fund basis on historical cost	979,209
Taxes	835,997
Total operating expense	$11,183,739"

In the commission's said allowance for operating expense for the year 1927 there is included an allowance for depreciation computed upon a 5% sinking fund basis on the historical cost of depreciable property amounting to $979,209, which allowance falls short by a minimum of $560,109 of even the inadequate allowance for depreciation charged by plaintiff on its books in the year 1927.

The actual amount of operating expense incurred by plaintiff in the year 1927, as shown in plaintiff's sworn annual report to the commission, was $11,876,360, which is $692,621 more than the total operating expense allowed by the commission in its said findings. There is nothing
34 in said decision and order No. 19521 or in the record in the case before the commission to show the grounds or the computations upon which such reduction in actual operating expenses, aside from the reduction of the allowance for depreciation, was made.

[fol. 328-a20] Plaintiff in the second half of the year 1927, after the denial by the commission of plaintiff's supplemental application for emergency and interim rates, was under the necessity of curtailing its normal and necessary operating expenses in every possible manner. Such curtailment can only be temporary unless a permanent impairment of plaintiff's property and operation is to take place, which inevitably would result in great permanent losses to plaintiff and in poor service to its patrons. Reduction of operating expenses was brought about by means of reduced service, curtailment of maintenance work on road and equipment and by reducing the number of plaintiff's shop and other employees necessary for normal operation. By reason of such curtailment of service and reduction of maintenance and shop work and maintenance and shop forces, the reasonable and normal operating expenses for the year 1927 were reduced during the latter part of 1927 by a sum of not less than $250,000.

Table D below shows the actual financial results from the operation of plaintiff's property under present rates in 1927, as compared with the estimated results assumed and found "as a fact" by the commission in its decision and order No. 19521. The first column of figures in said table shows the figures appearing in said decision and order No. 19521 and shows that with the commission's erroneous and inadequate allowance for operating expenses and with its erroneous and excessive estimate of net income available for return, plaintiff on the commission's own erroneous, insufficient and confiscatory rate base of $42,000,000 nevertheless earned and insufficient and confiscatory rate of return, according to the commission's own estimate, of only 4.93%.

Even upon these erroneous assumptions made by the
35 commission, plaintiff on that basis would have fallen short of earning an 8% return on the commission's confiscatory rate base by the sum of $1,289,739.

[fol. 328-a21] There can be no doubt that on the erroneous basis of the commission's own figures as shown in said column 1 and without any correction whatsoever of the erroneous figures used by the commission, plaintiff's present five-cent basic rate of fare results in the confiscatory rate of return of less than 5% on the commission's own confiscatory rate base of $42,000,000.

The commission's figures and estimates in the first column of Table D are erroneous and misleading and are contrary to the evidence in the record before the commission. The correct figures for the year 1927, for what they purpose to show, are the figures in the second column of said Table D. Said figures in said column 2 are based on the actual revenues and expenditures as they appear on plaintiff's books of accounts and in the sworn annual report on file with the commission. These are the figures that reflect the curtailed operating expenses and inadequate depreciation paid out and charged by plaintiff in the year 1927 by reason of the failure of the commission to grant fair and reasonable rates of fare. Column 2 shows that the actual curtailed operating expenses were in fact $692,621 higher than the operating expenses assumed by the commission in said column 1 and the net income available for return was in fact $1,411,141, instead of the sum of $2,070,261, as assumed by the commission in said column

1. The actual net income available for return in 1927 amounted to only 3.46% on the commission's own
36 confiscatory rate base of $42,000,000, and fell short by $1,948,859 of earning an 8% return on such confiscatory rate base of $42,000,000. Further, said actual net income of $1,411,141 amounted to a rate of return of only 3% on the minimum present value of plaintiff's property of $47,000,000 and fell short by $2,348,859 of earning an 8% return upon such minimum present value.

The third column of figures in Table D shows normal operating expenses and normal depreciation for the year [fol. 328-a22] 1927, without, however, adding to such operating expenses any allowance for increased service or for increased wages or compensation to employees and without increasing the allowance for depreciation by basing such depreciation, as may properly be done and as is shown in estimates made by the commission's own engineers, upon the valuation based on reproduction cost new less depreciation. On such conservative basis of normal operating expenses the last column in said Table D shows that the net income available for return in 1927 was the sum of $1,023,104 and that such net income amounted to a rate of return of only 2.43% on the commission's own confiscatory rate base of $42,000,000 and fell short of earning an 8% return upon such confiscatory rate base by $2,336,896. Said last column of Table D also shows that the net income available for return based on normal operating expenses amounts to only 2.18% on the minimum present value of plaintiff's operative property of $47,000,000 and falls short by $2,736,896 of earning a return of 8% upon such minimum present value.

[fol. 328-a23] 37 Table D

Financial Results from Operation of Plaintiff's Property under Present Rates in 1927—Actual and as Shown by Commission in Its Decision 19521

Item	Assumed & estimated by Commission in decision 19521	On basis of: Actual curtailed operating expenses & depreciation	On basis of: Normal operating expenses & depreciation
(a) Total Operating Revenues...	$13,254,000	$13,287,501	$13,287,501
(b) Total Operating Expenses including depreciation and taxes	11,183,739	11,876,360	12,264,397
(c) Net Income Available for Return	2,070,261	1,411,141	1,023,104
(d) Commission's Rate Base.....	42,000,000	42,000,000	42,000,000
(e) Rate of Return on (d).....	4.93%	3.36%	2.43%
(f) 8% Return on (d).....	3,360,000	3,360,000	3,360,000
(g) Deficiency in Earnings below 8% on (d).....	1,289,739	1,948,859	2,336,896

[fol. 328-a24] (5) With Reference to Plaintiff's Operating Methods and Possible Reductions in Cost of Operation

38 Deponent is intimately acquainted with plaintiff's operating methods and results and with operating methods and operating results on other street railway systems in California and elsewhere and avers that no changes in plaintiff's operating methods can be made that will result in large reductions or in any material reductions in the cost of operation and still enable plaintiff to render efficient and adequate service. On the contrary, plaintiff's transportation system is exceptionally well managed and is operated with exceptional efficiency and economy as shown in the record before the commission and as admitted by the commission's own engineers and by the engineers of the city of Los Angeles.

When plaintiff's operating methods and operating efficiency are measured by the common and accepted standards of cost per car mile, cost per car hour, cost per passenger mile, operating ratio and by other similar standards and when an analysis is made of all classes of operating expense, as prescribed in the accounting classification of the Interstate Commerce Commission, and when such ex-

39 penses are compared with similar expenses of other street railway properties, the fact is demonstrated that plaintiff's costs and methods of operation are better

than the average of the results shown for other street railway properties throughout the United States.

There is nothing in commission's decision and order No. 19521 to indicate what changes in the operating methods the commission has reference to in its finding that large reductions in the cost of operation might be made and still enable plaintiff to render efficient and adequate service. The record in the case before the commission, however, contains the proposal or recommendation of the commission's chief engineer, A. G. Mott, that plaintiff should put into effect on its transportation system 100% one-man car [fol. 328-a25] operation and the commission's chief engineer estimates that such 100% one-man car operation would result in a net reduction of labor costs of approximately $1,000,000 per year and the saving to plaintiff of $723,000 per year (Commission Exhibit No. 64).

Deponent avers that 100% one-man car operation of plaintiff's street railway lines is impossible and entirely unsuited to the present needs and requirements of the public in the city of Los Angeles; that a proposal of 100% one-man car operation is altogether unreasonable and unsound and deponent would consider such operation as mismanagement and as certain to cause great and increasing dissatisfaction on the part of the street car riders and the public as well as on the part of plaintiff's operating employees. Under the extreme conditions of traffic and congestion as they have existed in the city of Los Angeles for the past several years and as they exist at the present time, and having in mind the city's vital transportation needs and its rapid growth, 100% one-man car operation would inevitably result in unsafe, inefficient, inadequate and unsatisfactory service and create great difficulties for plaintiff's management in rendering the street railway transportation service which the city of Los Angeles needs and demands. Assuming, however, the possibility of one-man car operation on plaintiff's system in the city of Los Angeles and regardless of results, a long period of time would necessarily have to elapse, and the record before the commission so shows, before such one-man car operation could be installed, and large capital expenditures, in excess of $1,000,000, would have to be made to adapt plaintiff's equipment and operations to such one-man car operation.

Deponent has also consulted with the engineers and members of the Board of Public Utilities and Transportation of the city of Los Angeles and is informed and believes and therefore avers that said engineers and said members of said board consider such operation in the city of Los Angeles impracticable and are opposed to such one-man car [fol. 328-a26] operation. The record before the commission shows that the city of Los Angeles claims jurisdiction over service and operation, including one-man car operation, within the city of Los Angeles and that said city not only did not recommend or approve of such type of service as suggested by the Commission's chief engineer but is opposed to it as shown by resolution adopted by its Board of Public Utilities and transportation.

(6) With Reference to the Results Estimated to be Produced by Plaintiff's Proposed Rates

Under the basic rates as proposed by plaintiff, to-wit: 7¢ cash fare with free transfers and a ticket or token fare of four tickets for 25¢, and free transfers, and with school children's or students' rates of 3½¢, the financial operating result for the twelve months following the taking effect of such proposed fares is as estimated in the following Table E.

41 [fol. 328-a27] Table E

Operating Results from Plaintiff's Proposed Fares for First 12 months After Effective Date

It is estimated that 90% of revenue passengers will use tokens (6¼¢); 10% will pay 7¢ cash fare; curtailment of traffic 5%.

(a)	Total Operating Revenue	$15,759,909
(b)	Total Operating Expenses, excluding taxes	11,970,178
(c)	Net Revenue Railway Operations	3,789,731
(d)	Taxes	1,148,643
(e)	Operating Income (Earnings available as a return)	2,641,088
(j)	Rate Base fixed by Commission (Historical Cost 1926)	42,000,000
(k)	Percent of return on such value (j)	6.29%
(l)	8% Return on such rate base (j), at least	3,360,000
(m)	Deficiency in Earnings below an 8% return on such rate base (j), at least	718,912

Note

(1) Operating expenses are based on present wages which undoubtedly will be increased.

(2) This computation takes no account of cost of installing and operating the universal transfer as stipulated by plaintiff in accordance with commission's requirement.

[fol. 328-a28] Table E corresponds to a similar estimate (Exhibit No. 22) placed in evidence by deponent in the proceeding before the commission. Said Exhibit 22
42 was based on operations of the year 1926, with estimates for the year 1927. Table E shows a total operating revenue of $15,759,909 making allowance for a 5% reduction of traffic by reason of the proposed rate increase and also makes allowance for increase in traffic by reason of new extensions contemplated, according to the affidavit of plaintiff's chief engineer, P. B. Harris, to be made in the 12 months following the effective date of the rate increase. The estimate of operating expenses is based on the normal operating expenses for the year 1927, plus increased expenses by reason of increased rail and bus service. Said operating expense estimate is based on present rates of pay for platform and other labor and on present wages and salaries, notwithstanding the fact that with increased rates such wages and salaries will undoubtedly experience an increase. Neither is there taken into consideration in the item of operating expenses the cost of installing and operating the system of universal transfers between the local lines of the Pacific Electric Railway and the lines of plaintiff as stipulated by plaintiff in the proceeding before the commission in accordance with the commission's requirements. Item (d), taxes, is adjusted for state and federal taxes in accordance with the increased gross and net revenue.

Table E further shows that said operating income of $2,641,088 is equal to a rate of return of only 6.29% on the commission's own confiscatory rate base based on historical cost for the year 1926, of $42,000,000, and falls short of earning an 8% return on such confiscatory rate base in the amount of $718,912.

43 In decision and order No. 19521 the commission made its finding of fact No. 6, to-wit:

[fol. 328-a29] "That the schedule of fares applied for by applicant, to-wit: a seven (7) cent cash fare with four (4) single fare tokens for twenty-five (25) cents, may be reasonably expected to produce a gross revenue of approximately fifteen million seven hundred and eight thousand dollars ($15,708,000), and will, if permitted, produce a net annual return of 9.4 per cent upon the above rate base and the rates applied for, therefore, if put into effect, would be unjust and unreasonable."

Table E shows that said finding of fact is erroneous and that instead of producing a net annual return of 9.4 per cent upon the commission's confiscatory rate base of $42,000,000, the rates applied for by plaintiff as hereinabove shown, will not produce a rate of return higher than 6.29 per cent on the commission's said rate base.

The estimate of the commission of an expected annual return of 9.4 per cent under the rate proposed by plaintiff was based on plaintiff's operating expenses as arbitrarily reduced by the commission for the year 1927. The following Table F has been computed to show what the operating results would have been if plaintiff's proposed rates had been in effect for said year 1927.

[fol. 328-a30] 44 Table F.

Operating Results from Plaintiff's Proposed Fares for the Year 1927 if Such Fares Had Been in Effect

Estimated 90% Revenue Passengers would use Tokens (6¼¢); 10% Would Pay 7¢ Cash Fare; curtailment of Traffic 5%.

	Based on operating expenses	
	(1) Actual curtailed service & expenses	(2) Normal plus increased service
(a) Total Operating Revenue	15,657,090	15,657,090
(b) Total Operating Expenses exclusive Taxes	11,062,013	12,051,055
(c) Net Revenue Railway Operations	4,595,077	3,606,035
(d) Taxes	1,243,042	1,119,422

Table F—Continued

	Based on operating expenses	
	(1) Actual curtailed service & expenses	(2) Normal plus increased service
(e) Operating Income (earnings available as a return)	3,352,035	2,486,613
(j) "Rate Base" fixed by California Railroad Commission (Historical Cost 1926)	42,000,000	42,000,000
(k) Percent of Return on Such Value (j)	7.98%	5.92%
(l) 8% Return on Such Value (j), at least	3,360,000	3,360,000
(m) Deficiency in Earnings below an 8% Return on Such Value (j), at least	7,965	873,387

45

Note

(1) Operating Expenses above are based on present wages, which undoubtedly will be increased.

(2) The above estimates do not take into account cost of installing and operating the universal transfer as stipulated by plaintiff in accordance with commission's requirement.

[fol. 328-a31] Table F is similar to the preceding Table E and is made on two bases. Basis (1) is computed by allowing for plaintiff's actual operating costs under curtailed service and reduced expenses and with inadequate allowance for depreciation and without any allowance for additional service and extensions of rail and bus lines as such extensions and increased service had been demanded by the city and agreed to by plaintiff in the proceeding before the commission. Basis (2) allows plaintiff's actual operating expenses for the year 1927, plus additional expenses for normal operation and for plaintiff's minimum estimate of increased service as such service would have been installed had the increased rates been in effect in 1927. Basis (2) also allows for depreciation upon the basis agreed

upon in the joint report, but not, however, including the larger amount for depreciation that would be proper and justified if allowance were made upon reproduction cost new less depreciation in the amount and at the rates estimated (in Exhibit No. 64 in the record) by the chief engineer of the Railroad Commission.

The above estimates on Basis (1) and (2) include in operating expenses salaries and wages at present rates of pay only, although such labor costs unquestionably will be increased if higher rates take effect. Neither is there any allowance in either estimate for the cost of installing and operating the universal transfer system between the local lines of the Pacific Electric and plaintiff's lines as stipulated by plaintiff in accordance with the Commission's requirements in the proceeding before the commission.

46 Table F in estimate (1) shows that on the basis of the 1927 actual operating expenses under curtailed service and reduced forces, and reduced shop and maintenance work, plaintiff under its proposed rates would have had an operating income in 1927 available as a return of $3,352,035.

[fol. 328-a32] Notwithstanding the assumption in said estimate of the continuation of plaintiff's abnormally low operating expenses and curtailed service during the year 1927, said estimate nevertheless shows that even upon the commission's confiscatory rate base of $42,000,000, based on historical cost for the year 1926, as fixed by the commission, said earnings available as a return of $3,352,035 would have produced a rate of return of only 7.98% and would have fallen short by $7,965 of producing an 8% return upon said commission rate base.

A more normal and reasonable and a fairer estimate of the results of operation under the proposed rates in the year 1927 is shown in estimate (2). This estimate contains the minimum reasonable operating expenses for said year 1927 upon the assumption that the proposed rates had been in effect. And said estimate shows that there would have been available as a return an operating income of $2,486,613. Computed upon the commission's confiscatory 1926 rate base of $42,000,000 said operating income is equal to a rate of return of 5.92% and falls short by $873,387 of producing an 8% return upon the commission's said 1926 confiscatory rate base.

Table F conclusively shows that the Commission's finding of fact No. 6, quoted above, to-wit: that plaintiff's proposed rates if permitted to go into effect would have pro-
47 duced an annual return of 9.4% upon the commission's rate base, is erroneous and misleading if calculated upon the results of operation for the year 1927, regardless of whether such computation is based on estimate (1) or estimate (2) in Table F, above.

Based on the computation and summaries in the preceding Tables E and F, deponent believes and avers that plaintiff's proposed fares for the first 12 months after effective date, and under efficient and economic management and operation and under a schedule of necessary and reasonably satisfactory service, but no more, will under no circumstances produce a rate of return higher than 7% upon the confiscatory 1926 rate base of $42,000,000, based upon historical reproduction cost as fixed by the California Railroad Commission.

[fol. 328-a33] (7) With Reference to the Value of the Transportation Service Furnished by Plaintiff

The value of the transportation service furnished by plaintiff to the public even under the rates proposed by plaintiff is much greater than the cost of such service. This is demonstrated when the value of said service is measured by the accepted standards of average and maximum length of haul, by the safety, frequency, speed and comfort of service, taking into consideration the privileges of free transfers and half rates for school children, and it is also demonstrated when the character and cost of plaintiff's service is compared with the character and cost of street railway service of other systems in California and throughout the United States.

There is no conflict in the testimony of the commission's, the city's and plaintiff's witnesses in the proceeding
48 before the commission as to the high character and relatively low cost of the public transportation service given by plaintiff.

That the value of plaintiff's service even under the proposed rates is greater than the cost of such service is also demonstrated when comparison of value of service and

cost of service is made on the two local street railway transportation services in Los Angeles, viz. plaintiff's street railway system and the local system of the Pacific Electric Railway Company.

It is further demonstrated when the value of the present day dollar, that is the purchasing power of the dollar, is compared with the dollar's purchasing power prior to the World War and at the time plaintiff's present 5¢ fare was originally fixed. The record is replete with proof of the complete change of conditions that has come about in the economic structure of the country and in the economic circumstances affecting plaintiff's property and service since 1914. It is common knowledge that a new price level of all materials and labor has followed in the wake of the World [fol. 328-a34] War. Wages have increased at least 100% since 1914 and the increase in the cost of materials has approximated the increase in the cost of labor. The general level of commodity prices is now about 70% higher than in 1913. The price of practically everything which plaintiff has to buy has advanced accordingly. To illustrate: in the 1913 valuation of plaintiff's property made by the commission the price of plaintiff's 116# girder rail (the steel principally used by plaintiff) was $53.35 per ton; for track ties of the kind most used by plaintiff $.51 per tie; for switch tie lumber $23.97 per B. M. F.; and plaintiff was able to buy a street car, equipped, in 1913 for about $5,000. The corresponding figures in the 1923 joint valuation, with no substantial change since, were for girder rail $85.45 per ton; for ties $.96 each; for switch tie lumber $53.82 per B. M. F.; and in 1927 a modern street car, equipped, cost plaintiff $15,200. The federal, state and municipal
49 taxes paid by plaintiff in 1914 amounted to $363,551, while in 1927 they amounted to $814,347.

No proof is needed to demonstrate the fact that the purchasing power of the nickel has greatly decreased, while the cost of labor, materials and of money has greatly increased. Plaintiff is receiving for today's better, more frequent and greatly extended transportation service, as compared to the service rendered by plaintiff in 1914, the same 5¢ rate of fare that was received in 1914, notwithstanding the fact that the purchasing power of the nickel since 1914, by reason of conditions absolutely beyond plaintiff's control, has been

cut in half. It is impossible for plaintiff to meet with this pre-war nickel the 1928 cost of wages, materials, taxes and carrying charges on new capital, all of which are very much higher than they were at the time the 5¢ fare was originally fixed.

Courts and commissions throughout the land, including the California Railroad Commission, have regularly and re-
[fol. 328-a35] peatedly taken judicial notice of these changes and of the consequent necessity of having the rates and prices paid for public utility services reflect present costs and the present purchasing power of the dollar. Assumption by the Railroad Commission of the continued immutability of plaintiff's street railway rate structure devised prior to the World War, regardless of the confiscatory nature of the results of this assumption, has prevented and is now preventing improvements in the service rendered by plaintiff with resulting serious economic consequences to plaintiff, its employees and the cities and population served by plaintiff.

As a result of these unforeseen changes in the price level and the greatly increased costs of labor and materials, the rates of fare charged on street railways throughout the United States have during recent years generally and substantially advanced above the 5¢ fares generally in effect prior to the World War and this advance has taken place despite limitations contained in franchises and other contracts. The rates of passenger fares on all steam railroads and on interurban electric railways have necessarily, by orders of the California Railroad Commission and by other commissions and by the courts, been substantially advanced since 1913.

(a) Comparison with Other Street Railways Throughout the Country

The following Table G, entitled "Trend of Street Railway Fares in U. S. Cities," shows the average rate of cash fare from January 1st, 1918, to April 1st, 1928, in 258 cities of the United States of 25,000 population or over.

[fol. 328-a36] Table G

Trend of Street Railway Fares in U. S. Cities

Average Rates of Cash Fare Charged by Electric Railways Based on Rates in Effect in 258 (a) Cities in the U. S. of 25,000 Population or Over, Selected According to the 1920 Census

Date	Average rate of cash fare
January 1, 1918	5.0736¢
January 1, 1919	5.5163
January 1, 1920	6.1605
January 1, 1921	7.0853
January 1, 1922	7.2209
January 1, 1923	7.2349
January 1, 1924	7.2891
January 1, 1925	7.5682
January 1, 1926	7.7116
January 1, 1927	7.8589
February 1, 1927	7.9015
March 1, 1927	7.9248
April 1, 1927	7.9403
May 1, 1927	7.9403
51 June 1, 1927	7.9597
July 1, 1927	7.9752
August 1, 1927	8.0333
September 1, 1927	8.0449
October 1, 1927	8.0449
November 1, 1927	8.0643
December 1, 1927	8.0760
January 1, 1928	8.0953
February 1, 1928	8.1070
March 1, 1928	8.1186) Peak
April 1, 1928	8.1186) Peak

(a) The 1920 census shows 283 cities of 25,000 population or over which have railway service. Twenty-five cities are omitted because in 24 of them there is no flat city fare as the companies which give service in these cities base fares on a zone system. The other city was omitted because railway service was not given for the entire period covered in the above table. This city is Saginaw, Mich., in which service was suspended from August, 1921, to November 1, 1923.

[fol. 328-a37] The above Table G is identical with an exhibit introduced by deponent in the proceeding before the commission except for the fact that it extends the information shown in said exhibit to the latest available date. Table G shows that on January 1st, 1918 the average rate of cash fare in the 258 cities included in said table was 5.0736 cents and that in the ten subsequent years there has been a continuous and uninterrupted increase in said average rate of cash fare to a peak figure on April 1st, 1928 of 8.1186. This is an increase since January 1st, 1918, of 3.0458 cents or 60%.

During the entire period covered in Table G there has been no increase in plaintiff's 5 cent fare. It is to be noted

52 that plaintiff's present 5¢ fare is lower at the present time than was the average rate of fare ten years ago in the 258 cities included in Table G on January 1st, 1918.

The significance of said Table G and the exceptional cheapness of plaintiff's fare is still more apparent when the fact is kept in mind that the majority of the cities covered in said Table G are very much smaller than the city of Los Angeles and that the railway systems operating in such smaller cities of necessity furnish an inferior and less valuable service when measured by length of haul, frequency of service, speed, transfer and other privileges.

Under the rates proposed by plaintiff the average cash fare will be 6.325 cents, which is a lower rate of fare than the average rate of fare for all of the cities shown in Table G at any time subsequent to January 1st, 1921.

To compare street railway service on plaintiff's system in the city of Los Angeles with street railway service in 258 cities of 25,000 population or over as is done in the preceding Table G is a comparison necessarily discriminatory as against plaintiff's system. This, as heretofore [fol. 328-a38] stated, is true for the reason that a large majority of the cities included in Table G are small and of a population of less than 100,000 while plaintiff's transportation system operates under a 5¢ fare in what is today one of the largest cities in the United States.

The following Table H presents a fairer and better comparison of the value of plaintiff's service in relation to its present and proposed cost when compared with street rail-

way service and street railway fares in the larger cities of the United States. Table H shows present street railway fares in the 33 largest cities of the United States with a population of over 200,000, based on the 1920 U. S. census.

53 [fol. 328-a39] Table H

Present Street Railway Fares in Principal American Cities

(Cities Over 200,000—1920 Census)

City	Population, 1920 census	Rate of fare	
		Cash	Tickets or tokens
1. Akron, O.....	208,435	7¢	4/25¢.
2. Atlanta, Ga.....	200,616	10¢	4/30¢.
3. Baltimore, Md.....	733,826	9¢	3/25¢.
4. Boston, Mass.....	748,060	10¢	Flat.
5. Buffalo, N. Y.....	505,775	10¢	3/25¢.
6. Chicago, Ill.....	2,701,705	10¢	3/25¢—Elevated.
		7¢	3/20¢—Surface.
7. Cincinnati, O.....	401,247	10¢	3/25¢.
8. Cleveland, O.....	796,836	7¢	8/50¢.
9. Columbus, O.....	237,031	6¢	5/25¢.
10. Denver, Colo.....	256,491	8¢	2/15¢.
11. Detroit, Mich.....	993,739	6¢	9/50¢.
12. Indianapolis, Ind..	314,194	7¢	4/25¢.
13. Jersey City, N. J..	298,079	5¢	Zones. No transfers.
14. Kansas City, Mo...	324,410	8¢	2/15¢, 5/35¢.
15. Los Angeles, Cal..	576,673*	5¢	Los Angeles Ry. Co., Plaintiff.
		5¢	Zones Pacific Electric—local service.
16. Louisville, Ky.....	234,891	7¢	Flat.
17. Milwaukee, Wis....	457,147	7¢	8/50¢.
18. Minneapolis	380,582	8¢	6/40¢.
19. Newark, N. J.....	414,216	5¢	Zones. No transfers.
20. New Orleans, La..	387,408	7¢	Flat.
54			
21. New York, N. Y..	5,620,048	5¢	6¢, 7¢, & 8¢, 5¢ Zones (13 different companies.)
22. Oakland, Cal.....	216,361	7¢	Flat.
23. Philadelphia	1,823,779	8¢	2/15¢ P. R. T. Co.
		10¢	Zones P. Ry. Co.
24. Pittsburgh, Pa.....	588,193	10¢	3/25¢ $1.25 weekly pass.
25. Portland, Ore.....	258,288	8¢	6/45¢.
26. Providence, R. I...	237,595	8¢	Flat.
27. Rochester, N. Y....	295,750	9¢	6/50¢.
28. San Francisco, Cal.	506,676	5¢	Flat. Two separate large systems (Market St. Ry. & Municipal Ry.) & one smaller system (California Cable R. R.) no transfers between systems.
29. Seattle, Wash.....	315,652	10¢	3/25¢. Municipal system.
30. St. Louis, Mo.....	772,897	8¢	2/15¢.
31. St. Paul, Minn.....	234,680	8¢	6/40¢.
32. Toledo, O.....	243,164	10¢	8⅓¢.
33. Washington, D. C..	437,571	8¢	3/20¢.

*Los Angeles doubled in population since 1920.

[fol. 328-a40] The city of Los Angeles in Table H appears in alphabetical order as number 15, with a 1920 population of 576,673. Since 1920 this population has at least doubled. There has been invested and added to plaintiff's operative property since 1920 in net additions and betterments the total sum of almost exactly $15,000,000. During this same period the average length of haul has greatly increased and the character and quality of the service has been improved in every respect. Table H shows that out of
55 the 33 largest cities listed, only four remain (New York, San Francisco, Newark, N. J., and Jersey City, N. J.), outside of Los Angeles, where a 5¢ fare is in effect. One of these is New York where in addition to the 5¢ cash fare there are separate street railway companies operating under 6, 7, and 8 cent cash fares. One company operates under a 5¢ zone system. Thirteen different companies are operating in New York city and generally no free transfer privilege extends from the lines of one company to the lines of another. The average street railway fares in the city of New York are not fairly comparable with those of any other city in the country for the principal reason that the 5 cent subway fares are fixed in accordance with special contracts between the city and the companies, the city having furnished a large portion, several hundred million dollars, of the investment.

In the city of San Francisco, the second 5¢ fare city, three local systems are operating without a general interchange of free transfers among these three separate street railways. To go by street railway from one part of San Francisco served by one system to another part served by another system, it is generally necessary to pay two 5c fares. One of the two large street railway systems of San Francisco is the municipal system which escapes the payment of the 5¼% state gross revenue tax and all other federal, state and municipal taxes.

[fol. 328-a41] The other two 5¢ cash fare cities, Newark, N. J., and Jersey City, N. J., are served by the same transportation system. Operation in these cities is under a progressive 5¢ zone system without transfers and the average rate of fare in both of these cities is very much higher than 5 cents and much higher than plaintiff's proposed rates.

Table H shows that plaintiff's service and operation under the existing 5¢ cash fare, with free transfers and half rates for school children and students, and when all other relevant conditions are given consideration, stands unique. Plaintiff's system, unlike the systems of New York and San Francisco, serves by far the larger territory and
56 population of the city of Los Angeles, approximately 75% of the total local transportation passengers being carried on plaintiff's lines while approximately 25% are being carried on the local lines of the Pacific Electric Railway.

In this connection the fact heretofore referred to is important that plaintiff, upon the demand of the commission and upon the urgent and long sustained request of the city of Los Angeles, in order to bring about a measure of unification of service between the two local systems, filed its stipulation in the proceedings before the commission agreeing to put into effect, in the event that plaintiff should be permitted to charge its proposed schedule of rates, free universal transfers from its lines to the local lines of the Pacific Electric Railway and in return accept, free of charge, the transfers from the local lines of the Pacific Electric on its own lines.

The following Table J entitled "Analysis of Cash Rates of Fare in American Cities" offers another basis of comparison between the value of plaintiff's service and the service rendered by other street railway companies in other cities of the United States.

[fol. 328-a42] Table J.

Analysis of Cash Rates of Fare in American Cities

Group	Fare	No. of cities	Total population	Average population
I.	10¢ Flat	208	14,511,568	69,767
II.	10¢ Zones	22	2,637,811	119,900
III.	9¢ Flat	2	52,731	26,365
IV.	8¢ Flat	83	15,138,571	182,392
V.	8¢ Zones	8	154,365	19,295
VI.	7¢ Flat	154	13,077,679	84,920
VII.	7¢ Zones	9	272,829	30,314
VIII.	6¢ Flat	57	9,493,887	166,559
IX.	6¢ Zones	7	746,468	106,638

Group	Fare	No. of cities	Total population	Average population
57				
X.	5¢ Flat	92	9,456,066	102,783
XI.	5¢ Zones	38	8,047,896	211,787
XII.	3¢ Flat	1**	59,500	59,500
	Total*	667	73,649,371	110,419

[fol. 328-a43] Table J covers practically all cities in the United States and Canada in which street railway systems operate, including 667 communities with a total population of approximately 73,650,000. These cities have been divided into twelve fare groups as shown in the second column of said table. The 10¢ flat fare and the 10¢ zone fare, comprising groups 1 and 2, together constitute the largest group of an aggregate of 230 cities with an approximate aggregate population of 17,100,000. The second largest group is Group 4 where the 8¢ flat fare prevails,
58 aggregating a total population of approximately 15,100,000 in 83 cities. The third largest group is represented by Group 6 with a 7¢ flat fare comprising 154 cities with an aggregate population of 13,077,679.

Table J, as do the preceding tables G and H, clearly indicates that the value of plaintiff's service in relation to cost of such service compares exceptionally favorably with any other street railway system in the United States and will continue to compare exceptionally favorably in the event that the rates proposed by plaintiff are given effect.

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*After deducting cities included in more than one group as follows:
Chicago in I and IV.
Attleboro in I and IX.
Carlisle in I and IV.
Latrobe in I and IV.
McKeesport in I and IV.
Tacoma in I and X.
Philadelphia in II and IV.
New York in IV, VII, X, and XI.
Youngstown in IV and VI.
Bethlehem in VI and VII.
Jersey City in VIII and XI.
Los Angeles in IX and X.

**Lakewood, Ohio, suburb of Cleveland, Ohio; local line of Cleveland Railways Co., 3 cent fare is for local ride in Lakewood only.

(b) Comparison of the Two Local Street Railway Services in Los Angeles

In Tables G, H and J the character, quality and value of plaintiff's service has been compared with and measured by the cost and value of service on other street railway systems in the cities of the United States and Canada. Another and more direct measure of the value of plaintiff's service is available by a comparison of said service with the local service rendered by the Pacific Electric Railway in the city of Los Angeles. Similar comparison of the two local transportation services has been made by the
58 California Railroad Commission in several decisions and orders.

Such a comparison reveals that under the rates
69 proposed by plaintiff, namely, a 7¢ fare and four tickets or tokens for 25¢, which is equivalent to a [328-a44] 6¼¢ fare (both fares including free transfers), the rates of local service and the cost of local service to the street car rider will still be substantially higher on the local lines of the Pacific Electric Railway than they will be on plaintiff's lines. This discrepancy of rates, as
70 fixed by the Commission for essentially similar service in the city of Los Angeles, will become even greater in favor of the Pacific Electric local lines if the so-called universal transfer between the two local lines is put into effect in accordance with the stipulations heretofore filed with the commission by the Pacific Electric Railway Company and by plaintiff.

Based on the facts stated in this affidavit deponent avers that measured by any standards whatsoever and on the basis of any comparisons with essentially similar service in the city of Los Angeles or with street railway service elsewhere throughout the United States and Canada, plaintiff is furnishing a street railway and transportation service of a value to its patrons greatly in excess of the rates of fare proposed by plaintiff, and in the event of plaintiff's proposed rates taking effect such rates will still be greatly below the average rates for essentially similar transportation service in the city of Los Angeles and in the cities throughout the United States.

[fol. 329] IN UNITED STATES DISTRICT COURT

(The page numbers at the left are taken from the printed volume of affidavits filed with the District Court.)

PORTIONS OF AFFIDAVITS OF RAILROAD COMMISSION IN OPPOSITION TO MOTION FOR INTERLOCUTORY INJUNCTION (IN NARRATIVE FORM).

9 W. C. Fankhauser of Berkeley, California, graduate of Pomona College (1909) Ph. D. University of California (1912). In charge of Department of Finance and Accounts of the Railroad Commission of California since 1920 and an employee of said Commission since
10 1912; is familiar with annual reports of plaintiff and prices for sale of securities authorized by the Railroad Commission. Interest rates have decreased materially since 1920 and market prices of first mortgage 5% bonds of the Los Angeles Railroad Company and Los Angeles Railway Corporation have increased, bonds of the former having sold on a yield basis of 9.1% to 7.7% in 1920 and in the year ending April 20th, 1928, on a yield basis of 5.7% to 5.3%. First and refunding mortgage and 5% bonds of Los Angeles Railway Corporation sold in 1920 on a yield basis of 9.5% to 9.2% and in the year ending April 20th, 1928 on a yield basis of 7% to 6.7%. In affiant's opinion a return of 8% on alleged value is unreasonable and unnecessary to allow Los Angeles Railway Corporation to meet its obligations and finance the costs of additions and betterments.

12 The $8,000,000 referred to on page 6 of Amended Bill of Complaint represents moneys expended for additions to and betterments of properties of Los Angeles Railway Corporation and City Railway Company of Los Angeles and if said sum includes unpaid interest, such interest was earned by the Los Angeles Railway Corporation.

15 Affidavit of H. G. Mathewson

[fol. 330] H. G. Mathewson, a resident of Alameda, California, is Secretary of the Railroad Commission and has the duty of keeping a full and true record of all proceedings of said Commission. He has kept such a record of
22 that proceeding before the Commission numbered Application No. 4238 and entitled "In the Matter

of the Application of Los Angeles Railway Corporation for an Investigation of its Service and Financial Condition and for an Order authorizing it to so Operate its System and Change its Rates that the Income will be Sufficient to Pay the Costs of the Service" filed November 30, 1918. Hearings in said proceedings were held, and on May 31st, 1921, by Decision No. 9029, the Los Angeles Railway Corporation was authorized "to file with the Commission and put into effect within thirty (30) days from the date of this order, a schedule of rates increasing the present basic 5-cent fare to 6 cents." Said rate schedule has never been filed with the Commission but on the contrary on June 20th, 1921, Los Angeles Railway Corporation filed application for rehearing. Argument on the question of said rehearing was set for July 26th, 1921, several continuances of said argument being granted from time to time at the request of Los Angeles Railway Corporation, on March 14th, 1922, the Railroad Commission received the following letter:

"(Letterhead of Los Angeles Railway)

March 14, 1922.

In the Matter of Application 4238, Entitled Los Angeles Railway Corporation in re Rates and Service, Before the Commission en Banc, at Los Angeles

To the Railroad Commission of the State of California, Pacific Finance Building, Los Angeles, California.

Attention Hon. Harley W. Brundige, President

[fol. 331] DEAR SIR: The Los Angeles Rwy. Corpn. has heretofore asked for several continuances of the argument in this case and has hoped to be ready by the date set, to wit, March 20th. We find, however, that the amount of preparation required, as well as the intervening of several other matters before the Commission, is such as to compel us to ask that this case be stricken from the calendar, to be restored on motion at some date in the future. If this can be done, it will enable the corporation to properly prepare and present other urgent matters now before your Honorable body.

Respectfully submitted.

(Signed) W. E. Dunn, Vice-President."

24 On March 16th, 1922, said proceeding was temporarily removed from the calendar and on October 18th, 1926, the following letter was received by the Railroad Commission:

"(Letterhead of Los Angeles Railway)

October 13, 1920.

Railroad Commission, State of California, State Building, San Francisco, California.

In re Application No. 4238

GENTLEMEN: The above application was dropped from the Commission's calendar, upon our request on March 14, 1922, and no further action has been taken in the matter since that date.

In view of the entire change of conditions since 1918, when Application No. 4238 was filed by this company, we at this time request that your Honorable Commission dismiss Application No. 4238 and the matters supplemental thereto.

[fol. 332] Very respectfully, Los Angeles Railway Corporation by (Signed) G. J. Kuhrts, Vice President and Gen. Manager. Gibson, Dunn & Crutcher, by (Signed) S. M. Haskins, Its Attorneys."

That pursuant to this request the Railroad Commission, on October 25th, 1926, by its Decision No. 17,526, made the following order:

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

25 "Decision No. 17526

In the Matter of the Application of LOS ANGELES RAILWAY CORPORATION for an Investigation of Its Service and Financial Condition and for an Order Authorizing it to so Operate Its System and Change Its Rates that the Income Will Be Sufficient to Pay the Cost of the Service.

Application No. 4238

Order Setting Aside Decision and Dismissing Application

By the COMMISSION:

Request having been made by applicant in the above entitled matter for dismissal of this application, and

Good cause appearing for the granting of said request,

It is hereby ordered that the above entitled application, being Application No. 4238, be and the same is hereby dismissed, and

It is hereby further ordered, that Commission Decision No. 9029 heretofore rendered in the above entitled matter, which decision has been suspended by virtue of the pendency of a petition for rehearing, be and the same is hereby set aside and revoked.

[fol. 333] Dated at San Francisco, California, this 25th day of October, 1926.

H. W. Brundige, C. L. Seavey, Ezra W. Decoto, Leon O. Whitsell, Commissioners."

29 Affidavit of A. G. Mott

He is a civil and electrical engineer, graduate of Stanford University (1908 A. B.; engineer in electrical engineering 1909); has been employed by the Union Iron Works of San Francisco, United Railroads of San Francisco and Southern Pacific Company, and since 1921 by the Railroad Commission of the State of California, first as Assistant
30 Engineer in the Transportation Division, later as Transportation Engineer, and from December 1926
31 as Chief Engineer. He has had charge of many engineering investigations involving electric and street
32 railroads including twelve such railways in California. He has made a special study of street and electric railway practices in large eastern cities of the United States and Canada.

43 On information and belief he declares that the statements of operating revenue, expense and return, shown in Table "B" of affidavit of Richard Sachse in support of the Amended Bill of Complaint, do not represent the actual or proper operating expenses for plaintiff's operations for which fare increases are sought, but include revenues earned and expenses incurred in operation of bus and motor coaches in service on which no increase in fare is sought by plaintiff.

44 [fol. 334] He is informed and believes that the operating expenses shown in said table are not actual because they include large and unreasonably high and theoretical allowances for depreciation grossly in excess of actual accrued depreciation on plaintiff's property and

true and actual operating revenues and operating expenses are more accurately reflected in Table No. 5 of John E. Cooper's affidavit, now filed by defendant. Provisions for depreciation reserves are for the sole purpose of meeting or reducing amounts otherwise chargeable to operating expenses or to profit and loss accounts to cover costs of renewing or retiring property, and the amount to be charged should be determined by the carrier's experience and best sources of information as to the actual requirements as are shown by provision 14 of the uniform system of accounts for electric railways prescribed by the Interstate Commerce Commission in accordance with which plaintiff's accounts should be kept, as follows:

"14. Depreciation.—Depreciation accounts in which to include monthly charges to cover depreciation of way and structures, equipment, power plant buildings, and power plant equipment are provided in order that carriers may create reserves which will meet or reduce the amounts otherwise chargeable to operating expense or to profit and loss account to cover the cost of the renewal or retirement of property. Such depreciation charges should be upon a basis determined to be equitable according to the carrier's experience and best sources of information as to the actual accruals of current loss from depreciation."

45 Table No. 4 of John E. Cooper's affidavit now filed by the defendant shows the actual experience of plaintiff as to its costs for renewals or retirements on its property for fifteen years. During this period the maximum [fol. 335] gross retirements less salvage chargeable to depreciation reserve was $840,670 in any one year. Based on the actual experience of the company over this period affiant believes that $750,000 per year is a fair, proper and liberal amount to be allowed for depreciation on plaintiff's street railway and other properties on which rates are here sought to be increased.

The Railroad Commission in decision No. 19521, allowed $979,209 for depreciation as applicable to all depreciable property of plaintiff which was very liberal and greatly in excess of the amount the commission was under any duty to allow.

46 He is informed and believes that plaintiff could greatly reduce the necessary operating expense and

at the same time improve service by providing greater loading facilities in congested areas in accordance with the plan of one-man operation with ground loaders described by affiant and introduced into evidence before the commission. This plan was based on practices actually and successfully used by street railway operators in large cities and affiant is informed and believes that the operating expenses of plaintiff could be reduced by at least $700,000 per annum.

He is of the opinion and believes that there are other methods by which plaintiff's revenues could be augmented less burdensome to the public than its increased fare proposal, and in this connection he is informed and be-
47 lieves that plaintiff annually carries in excess of 7,000,000 passengers per year free and without charge, from which there would accrue an additional revenue in excess of $350,000 if such passengers paid 5¢ per ride. It is his opinion and belief that if and when additional revenue should be held to be needed, other forms of fare increases can be devised which would, if made effective, produce large additional revenues on a much more equitable basis than plaintiff's proposed flat fare increases. Affiant has suggested at least one other such plan in this proceeding before the Railroad Commission (Application No. [fol. 336] 13323) whereby the burden of increased fares would fall solely upon long-haul riders. This is the inner-neutral zone system, and affiant is of the opinion and belief that such a fare system would produce large increases in revenue on a more equitable basis to the public than similar large increases in revenue produced by straight fare increases. This inner-neutral zone system consists of charging a 5¢ fare between the down-town business section of the city and the outlying sections within plaintiff's present 5¢ zone area, including transfer privileges within those limits. An additional 5¢ fare would be charged passengers actually riding from outlying territory through the down-town section and out again on the far side. Under such plan the passenger from an outlying section to the down-town area, or intermediate points, would suffer no increase in fare, but passengers riding from one side of the city to
48 the other, through the down-town zone, would pay two fares. The amount of increased revenue from such a zone system would depend primarily upon the established limits of the inner-neutral zone. He is informed and

believes that such limits could be established so that there would be produced any amount of revenue found necessary up to a sum of approximately $15,250,000, or a total increase of approximately $2,000,000 over existing revenues. Affiant believes that the establishment of plaintiff's proposed rates will produce a gross revenue in excess of $15,708,000, leaving a net income of approximately $3,950,000.

[fol. 337] Affidavit of John Edward Cooper

67 The affiant is assistant engineer in the Transportation Division of the California Railroad Commission's Engineering Department. It has charge of matters pertaining to service, operation, rates and construction of railroads and other transportation companies. Prior to the organization of the Valuation Division by said commission, the Transportation Division prepared valuations of railroad and other transportation properties in connection
68 with proceedings before the commission and assisted in the preparation of valuations of interstate railroad property in California in connection with Interstate Commerce Commission's valuations of said properties.

Affiant has been employed by the Railroad Commission since 1919 and prior to that was engaged in engineering practice for two years including service in the United
69 States Engineering Corps. He has made valuations and studies of the properties of practically all street railroad systems in California, including that of
70 plaintiff. He has made an analysis of service and operations of plaintiff and prepared certain exhibits for hearings in connection with plaintiff's application for an increase in fare before the Railroad Commission.

73 The following table, which is similar to the table on page 15 of Exhibit No. 63, before the Railroad Commission, shows the per cent return and net income of plaintiff's railway and bus system from 1922 to 1926 inclusive.

[fol. 338] "Table No. 2

Net Income and Per Cent Return Received by Plaintiff from the Operation of Its Street Railway and Bus System, Years 1922 to 1926

Years	Net income	Per cent return
1922	$3,043,669	9.7
1923	3,278,232	9.4
1924	2,879,307	7.4
1925	2,090,910	5.2
1926	1,910,466	4.6
Average for period		7.1"

The figures used in compiling the net income are, with the exception of depreciation figures, the amounts recorded by plaintiff in its books covering revenues, expenses and taxes. Depreciation figures were determined from a detailed study and inspection of plaintiff's properties and are based on normal maintenance of such properties, being estimated on a 5% sinking fund basis. The per cent returns are calculated upon Railroad Commission's finding in decision No. 19521 of a rate base of $42,000,000, reduced for years preceding 1926 by deducting additions and betterments. Average annual per cent return for the years 1913 to 1926, inclusive, similarly calculated, is 6.1% as shown in the following table:

[fol. 338-a1] Table No. 3

75 Net Income and per Cent Return Derived by Plaintiff from the Operation of Its Street Railway and Bus System, Years 1913 to 1926

Year	Approximate value on basis of value found for 1927	Net income adjusted for 5 per cent sinking fund depreciation	Per cent return
1913	$22,700,000	$1,830,000	8.1
1914	23,700,000	1,680,000	7.1
1915	24,500,000	1,290,000	5.3
1916	25,200,000	1,280,000	5.1
1917	25,500,000	1,190,000	4.7
1918	25,800,000	730,000	2.8

Table No. 3—Continued

Year	Approximate value on basis of value found for 1927	Net income adjusted for 5 per cent sinking fund depreciation	Per cent return
1919	26,100,000	860,000	3.3
1920	27,000,000	1,600,000	5.9
1921	28,500,000	1,770,000	6.2
1922	31,400,000	3,040,000	9.7
1923	34,800,000	3,280,000	9.4
1924	38,800,000	2,880,000	7.4
1925	39,900,000	2,090,000	5.2
1926	41,200,000	1,910,000	4.6
Average for 14-year period			6.1

The method of calculating depreciation above mentioned results in affiant's opinion in depreciation allowances which are very liberal and greatly exceed the actual expenditure incurred by plaintiff incident to the annual renewal and retirement of its properties.

77 The actual gross retirements, less salvage, on this company's properties during fifteen years, from 1913 to 1927, inclusive, were in all years except 1923 less in [fol. 339] amount than the depreciation amounts. The total of the depreciation allowances, as calculated by affiant for the period, amounts to $9,538,190, which amount is $4,325,604 more than the total expenditures for gross retirements, less salvage for the same period. Affiant is of the opinion that the net incomes and per cent returns, based upon the depreciation amounts so calculated by him, reasonably represent the true net incomes and returns derived from plaintiff's entire street railway and bus system.

Plaintiff's street railway system is composed of various railway and bus lines. The street railway lines are
77 operated over 374 single track miles of narrow gauge track. There are two bus divisions, the first including buses operated solely by plaintiff, and the second including buses operated jointly by plaintiff and the Pacific Electric Railway Company under the name of the Los Angeles Motor Coach Company (formerly Los Angeles Motor Bus Company). In 1926 plaintiff operated approxi-

mately 32,477,000 car miles, 3,002,442 bus miles on its own division and 1,184,266 bus miles through the Los Angeles Motor Coach Company. Plaintiff requested no increase in the fares charged upon the lines of the Los Angeles Motor Coach Company and no increases upon certain of the
78 lines of the Los Angeles Railway Bus Division, and affiant is of the opinion that said bus lines upon which no increase in fares was requested can properly be excluded from all estimates of cost, revenues, expenses, depreciation, taxes and return. Excluding those bus lines upon which no increase in rates was requested, the financial results from the operation of plaintiff's railway system for the years 1926 and 1927 are as follows:

[fol. 340]	1926	1927
Operating revenues	$12,385,745	$12,474,943
Operating expense:		
Excluding depreciation	8,831,638	8,853,051
Depreciation	829,553	848,914
Total	$9,661,191	$9,701,965
Operating revenue	2,724,554	2,772,978
Taxes	776,022	767,232
Operating income	1,948,532	2,005,746

The above statement reflects actual revenues, expenses and taxes as reported by plaintiff in its books and records, omitting revenues, expenses and taxes applicable to those bus lines on which plaintiff does not seek an increase in fares and substituting affiant's liberal and adequate allowances for plaintiff's theoretical and grossly exag-
79 gerated allowances for depreciation. Affiant has made no complete analysis of the operation of plaintiff's system for the year 1927, but, based upon the reports of plaintiff and his knowledge of plaintiff's operations, he does not believe that plaintiff curtailed its normal and necessary operating expenses during the year 1927. The total expenditure for operation per revenue passenger handled, expressed in cents, during the years 1913
80 to 1927, is as follows: 1913, 3.36; 1914, 3.67; 1915, 3.73; 1916, 3.52; 1917, 3.78; 1918, 4.04; 1919, 4.12;

1920, 3.91; 1921, 4.07; 1922, 3.67; 1923, 3.83; 1924, 3.80; 1925, 4.11; 1926, 4.22; 1927, 4.25.

The price level for labor has not increased and the price level for materials has decreased, as applicable to the operation of plaintiff's street railway, during the past five years. Under the basic 5-cent fare the annual per cent returns earned by plaintiff from the operation of its street railway and bus system have fluctuated from year to year [fol. 340-a1] as indicated in Table 3, with relatively higher returns in the years 1913 and 1922 and relatively low returns in the years 1918 and 1926. The minimum return during the years 1913 to 1926 was 2.8% in 1918, and the maximum was 9.7% in 1922. It cannot be expected that the annual per cent returns will be, nor are they in fact, constant. However, during this period, 1913 to 1926, the average annual per cent return has been 6.1% and for the period between 1922 and 1926, inclusive, it has been 7.1%. While the per cent return for the year 1926 was below either of the above average annual per cent returns, the results from operation have again begun to improve, as indicated by the higher return in 1927 as compared
81 with that of 1926. The results from operations so stated include all the transportation operations of plaintiff, including those motor bus operations for which no increase of fares is asked. Affiant states that said bus operations do not earn as great a rate of return as do the rail lines of plaintiff and in fact they earn little, if any, [fol. 341] sums in excess of their actual out-of-pocket operating expenses.

85 Affidavit of Eugene P. McAuliffe .

Affiant is Assistant Engineer of the California Railroad Commission in charge of land appraisals. He has been employed by the Southern Pacific Company as architectural draftsman, was an officer of engineers in the United States Army during the war, and has been employed continuously by the Railroad Commission in the valuation of pub-
86 lic utility property in California since 1915, with the exception of one and one-half years during the war. He has occupied his present position continuously since 1919 and during that time has made valuations of land rights-of-way and franchises of public utilities in Cali-

fornia, including utilities throughout the state, with an appraised value in excess of $80,000,000. He has made inventories and appraisals of the land and franchise accounts of the larger public utilities of Southern California,
87 including the Los Angeles Railway Corporation and others. Based on his analysis of the franchise records and maps in the plaintiff's office at Los Angeles and in the Commission's office at San Francisco, and on the official franchise records of the cities of Los Angeles,
88 Vernon and Huntington Park, and the official records of Los Angeles County, affiant finds that, as of December 31, 1926, plaintiff's electric lines occupied public streets by virtue of one hundred and fourteen (114) franchises, granted by said cities and the County of Los Angeles; that of these one hundred and fourteen (114) franchises, (a) eighty-one (81) franchises, each contain a five (5) cent fare clause with no qualifying clause providing for a possible change in fare; (b) sixteen (16) franchises, each contain a five (5) cent fare clause with a qualifying clause substantially as quoted in the bill of complaint; (c) seven (7) franchises, each contain a fare clause specifying other than a flat five (5) cent fare; and (d) ten (10) fran-
[fol. 342] chises, each contain no fare clause.

Translated into terms of franchise mileage this means that plaintiff's electric lines occupied the public streets of said cities in the County of Los Angeles to the extent of approximately one hundred forty-eight and three one-hundredths (148.03) franchise miles under these one hundred and fourteen (114) franchises. Of this total of one hundred forty-eight and three one-hundredths (148.03) miles approximately one hundred and twenty-four and fifty one-hundredths (124.50) franchise miles are occupied under franchises containing a 5¢ fare clause with no qualifying clause providing for a possible change in fare; approximately eleven and eighty-nine one-hundredths (11.89) franchise miles are occupied under franchises containing a five (5) cent fare clause with a qualifying clause substantially as contained in the bill of complaint; approximately nine and twenty-seven one-hundredths (9.27) franchise miles are occupied under franchises containing a fare clause specifying other than a flat five (5) cent fare; and approximately two and thirty-seven one-hundredths (2.37) fran-

chise miles are occupied under franchises containing no fare clause.

89 A large majority of said franchises provide substantially or expressly that the grantee shall, without extra charge, issue to and receive transfers good for continuous passage over and upon any and every other line which the grantee, its successors or assigns, now or may hereafter own, control, operate or have a controlling interest in. Practically every said franchise contains a forfeiture clause providing substantially or expressly that any neglect, failure or refusal of the grantee, its successors or assigns, to comply with any of the conditions or stipulations of the grantee shall immediately effect a forfeiture thereof, the grantor being given the power to declare the [fol. 343] said franchise forfeited and to exclude the grantee, its successors or assigns, from further use of the streets under the franchise, and said grantee agrees thereupon and immediately to surrender all rights under said franchise and that it shall become and remain null and void and of no effect.

Affiant attaches hereto a list of all the franchises by virtue of which the plaintiff occupied the streets as of December 31, 1926, which list shows the grantor, ordinance number, date of grant, date of expiration, route, fare clause, if any, and whether or not the 2% gross revenue clause is included. This list follows:

[fol. 344]

Ordinance	Number	Date granted	Date of expiration	Route	Fare Clause	2% Tax Clause
City of L. A.	13186	8-13-06	8-13-27	On 7th, Broadway to Boyle Avenue.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	41255	1- 7-21	9-15-27	Maple, 7th to 32nd.	The rate of fare to be charged under this franchise shall not be more than 5 cents for one continuous ride in the same general direction within the corporate limits of the city, except upon a showing before a competent authority, having jurisdiction over rates of fare, that such greater charge is justified.	Yes
City of L. A.	14249	3- 1-07	3- 1-28	Pasadena Avenue, near York Boulevard to Avenue 62; Eagle Rock Avenue, Avenue 62 to Meridian Street; York Boulevard, Pasadena Avenue to Avenue 57.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	14615	4-16-07	4-16-28	Pico, Manhattan to Arlington.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	17285	10-20-08	10-20-29	Washington, La Salle to Arlington.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes

92

City of L. A.	2022	2-14-94	2-14-29	Boyle Avenue, Stephenson Avenue to 6th; 6th, Boyle Avenue to Cumming; Cumming, 6th to 1st.	The rate of fare, for any distance, along said road or its branches, one way, shall not exceed 5 cents for one passenger.	No
93						
City of L. A.	17772	2-18-09	2-18-30	54th, Hoover to Dalton.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	17950	4- 5-09	4- 5-30	Boyle Avenue, 7th to Stephenson Avenue.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	17881	3-20-09	3-20-30	16th, San Pedro to Substation.	None.	No
City of L. A.	19535	1- 4-10	1- 4-31	9th, Park View to Vermont; 8th, Vermont to Catalina; 8th, Irolo to Harvard.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	19736	2-23-10	2-23-31	Melrose, Heliotrope to Normandie.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
[fol. 345]						
City of L. A.	20289	5-24-10	5-24-31	39th, Vermont to Western.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passeger.	Yes
94						

Ordinance	Number	Date granted	Date of expiration	Route	Fare Clause	2% Tax Clause
City of L. A.	24015	12-28-11	12-28-33	Vermont, 9th to 8th; Vermont, 1st to 3rd; Vermont, 3rd to 24th; Vermont, 3rd to 3rd (north bound track only); Vernon, Alameda to Vermont; Jefferson, Main to Griffith; Jefferson, McKinley to Central; 38th, Central to Ascot.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	26160	10-31-12	10-31-33	Main, Moneta to Slauson.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	26297	11-14-12	11-14-33	Across 10 streets.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	26976	2-19-13	2-19-34	Vernon, Dalton to Van Ness Avenue.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	27418	4- 3-13	4- 3-34	10th, Hoover to Victoria Drive.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	27419	4- 3-13	4- 3-34	54th, Dalton to near 1st Avenue.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes

95

Co. of L. A.	134	1- 9-06	2- 1-36	6th, Vermont to Normandie.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	862	11-29-90	2-20-36	Main, Temple to 2nd; Main, 7th to 9th; Main, 10th to Broadway; Main, Pico to Jefferson; Jefferson, Main to University; University, Jefferson to Exposition.	The rate of fare, for any distance, along said road or its branches, one way, shall not exceed 5 cents for one passenger.	No
[fol. 346]						
City of L. A.	8400	6-24-03	6-24-36	12th, Main to Stanford Avenue; Stanford Avenue, 12th to 14th; 14th, Stanford to Griffith; Griffith, 14th to Jefferson; Jefferson, Griffith to McKinley; McKinley, Jefferson to Vernon.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceel 5 cents for one passenger.	Yes
96						
Co. of L. A.	Min. Bk. 9-206	8- 5-86	8- 5-36	Pico, Hoover to Manhattan.	The rate of fare (for passengers) on said road shall never exceed 10 cents; the said Board of Supervisors reserving the right to establish a fare not exceeding 10 cents and not less than 5 cents.	No
City of L. A.	9712	7-15-04	7-15-36	11th, Main to Figueroa; 11th, Georgia to Hoover.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	32667	7-15-15	7-15-36	Evergreen Avenue, Brooklyn Avenue to Wabash Avenue; Wabash Avenue, Evergreen Avenue to Charter Boundary.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes

Ordinance	Number	Date granted	Date of expiration	Route	Fare Clause	2% Tax Clause
City of L. A. 97	41105	12- 4-20	8- 5-36	Pico, Flower to Hoover.	The rate of fare to be charged under this franchise shall not be more than 5 cents for one continuous ride in the same general direction within the corporate limits of the city, except upon a showing before a competent authority, having jurisdiction over rates of fare, that such greater charge is justified.	Yes
City of L. A.	33309	11-11-15	11-11-36	San Pedro, 30th to South Park; South Park, San Pedro to Slauson.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	8897	11-24-03	11-24-36	Moneta Avenue, Jefferson to Slauson.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	10321	12-19-04	12-19-36	12th, Stanford to Hooper; Hooper, 12th to 29th.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
Co. of L. A.	Min. Bk. 9-341	1- 7-87	1- 7-37	Washington, Hoover to Mariposa.	The rate of fare for passengers on said railroad shall never exceed 10 cents; the Board of Supervisors reserving the right to establish a fare not exceeding 10 cents or less than 5 cents.	No

[fol. 347]

City of L. A. 98	9116	1-18-04	1-18-37	10th, Main to Broadway; Main, Broadway to Pico; Pico, Broadway to Flower.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	39875	3- 2-20	2-21-37	Broadway, 10th to Pico.	The rate of fare to be charged under this franchise shall not be more than 5 cents for one continuous ride in the same general direction within the corporate limits of the city, except upon a showing before a competent authority, having jurisdiction over rates of fare, that such greater charge is justified.	Yes
Co. of L. A.	Min. Bk. 9-489	7- 1-87	7- 1-87	Vermont, Santa Barbara to south of 63rd.	The rate of fare for passengers on said railroad shall never exceed 3 cents per mile.	No
City of L. A.	8380	6-12-03	6-12-39	1st, Evergreen to Indiana.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	8381	6-12-03	6-12-39	Stephenson, Boyle Avenue to Indiana; Evergreen, 1st to 4th.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A. 99	38536	10-22-18	10-22-39	Victoria, 10th to Country Club Drive; Country Club Drive, Victoria to Los Angeles High School.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes

Ordinance	Number	Date granted	Date of expiration	Route	Fare Clause	2% Tax Clause
City of L. A.	8312	5-16-03	5-16-40	6th, Figueroa to Loomis; Loomis, 6th to 6th; 6th, Loomis to Benton.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	8355	5-28-03	5-28-40	Maple, 32nd to Woodlawn; Woodlawn, Maple to Santa Barbara; Santa Barbara, Woodlawn to Wall.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	9675	6-29-04	6-29-40	Wall, 47th to 51st.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	942	3-23-91	8- 7-40	Fourth, Spring to Broadway; Santa Fe Ave., 1st to 2nd; Spring, 2nd to 4th; 2nd, Spring to Olive; Olive, 2nd to 1st; 1st, Olive to Bonnie Brae; Bonnie Brae, 1st to Ocean View Avenue; Alvarado, 6th to 7th.	At no time shall the fare, for any distance, along said road, one way, exceed the sum of 5 cents for one passenger.	No
[fol. 348]						
City of L. A.	2326	9-21-94	9-21-40	Ocean View Avenue, Bonnie Brae to Alvarado; Alvarado, Ocean View Avenue to 6th.	The rate of fare, for any distance, along said road or its branches, one way, shall not exceed 5 cents for one passenger.	No

City of L. A.	971	5- 1-91	10-13-40	Fifth, San Pedro to Central; Broadway, 7th to 10th; North Broadway, Sunset Boulevard to Los Angeles River; Pasadena Avenue, Los Angeles River to Avenue 19; Santa Fe Avenue, 3rd to 978' south; Spring, Main to 2nd; 10th, Broadway to Flower; Estrella Avenue, Washington to 23rd; 23rd, Estrella to Union; Union, 23rd to Hoover; Hoover, Union to 32nd; Washington, Flower to Figueroa; Flower, 10th to Washington.	The fare, for any distance, over said road, within the city limits, shall not exceed 5 cents for one passenger.	No
City of L. A.	27120	3-18-13	10-13-40	Sunset Boulevard, Main to North Broadway.	The rate of fare, for any distance, along said road or its branches, one way, shall not exceed 5 cents for one passenger.	No
City of L. A.	9246	2-23-04	2-23-41	6th, Alvarado to point 330' westerly of Coronado.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	40213	5- 3-20	5- 3-41	Temple, Spring to Hoover.	The rate of fare to be charged under this franchise shall not be more than 5 cents for one continuous ride in the same general direction within the corporate limits of the city, except upon a showing before a competent authority, having jurisdiction over rates of fare, that such greater charge is justified.	Yes
101						

Ordinance	Number	Date granted	Date of expiration	Route	Fare Clause	2% Tax Clause
City of L. A.	986	5-28-91	5-28-41	2nd, Spring to Main; Traction Avenue, Alameda to 3rd.	The rate of fare, for any distance, along said road or its branches, one way, shall not exceed 5 cents for one passenger.	No
City of L. A.	6589	6- 4-01	6- 4-41	Jefferson, University to 4th Avenue.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger * * * and at the expiration of five years from the date of this franchise, the grantee shall sell 25 tickets for $1.00 * * *.	Yes
[fol. 349]						
City of L. A. 102	40466	6-21-20	6-21-41	Western, Melrose to Santa Monica Boulevard.	The rate of fare to be charged under this franchise shall not be more than 5 cents for one continuous ride in the same general direction within the corporate limits of the city, except upon a showing before a competent authority, having jurisdiction over rates of fare, that such greater charge is justified.	Yes
Coy of L. A.	9775	7-20-04	7-29-41	Columbia, 2nd to Crown Hill Avenue; Crown Hill Avenue, Columbia to Witmar.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	1024	8- 6-91	8- 6-41	Central Avenue, 2nd to 3rd; Central, 3rd to Charter Boundary (30th).	The rate of fare, for any distance, along said road or any line owned by said Company, one way, shall not exceed 5 cents for one passenger.	No

				32nd, Hoover to McClintock; McClintock, 32nd to Vermont; Central, Charter Boundary to Slauson.	The payment of one fare of not to exceed 5 cents shall entitle passengers upon said road to ride continuously one way over the entire length of the franchise hereby granted, and connecting lines.	No
City of L. A.	40734	8-25-20	8-25-41	Central, Merril to 1600' South.	The rate of fare to be charged under this franchise shall not be more than 5 cents for one continuous ride in the same general direction within the corporate limits of the city, except upon a showing before a competent authority, having jurisdiction over rates of fare, that such greater charge is justified.	Yes
103						
City of L. A.	40735	8-25-20	8-25-41	South Park, South Slauson to Merril.	The rate of fare to be charged under this franchise shall not be more than 5 cents for one continuous ride in the same general direction within the corporate limits of the city, except upon a showing before a competent authority, having jurisdiction over rates of fare, that such greater charge is justified.	Yes
City of L. A.	32180	4-21-15	9- 7-41	Temple, Broadway to Hill; Hill Temple to California.	The rate of fare, for any distance over said road or its branches, one way, shall not exceed 5 cents for one passengers.	No

Ordinance	Number	Date granted	Date of expiration	Route	Fare Clause	2% Tax Clause
[fol. 350]						
City of L. A. 104	6688	9- 4-01	9- 7-41	Broadway, 1st to Temple; California, Hill to Bunker; Bunker, California to Boston; Boston, Bunker to Figueroa; Figueroa, Boston to Alpine; Alpine, Figueroa to Bellevue Avenue; Bellevue Avenue, Alpine to Edgeware Road; Edgeware Road, Belleview Avenue to Douglas; Douglas, Edgeware Road to Kensington Road; First street, Hill to Broadway; Belmont Avenue, Temple to 1st; Loma, 1st to 2nd; 2nd, Loma to Columbia; Crown Hill Avenue, Witmar to Boylston; Boylston, Crown Hill Avenue to 3rd; 3rd, Boylston to Flower; Flower, 3rd to 6th; Hill, 1st to 3rd.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A. 105	6702	9-20-01	9-20-41	Adams, Western to Arlington.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger * * * and at the expiration of five years from the date of this franchise, the grantee shall sell 25 tickets for $1.00 * * *.	Yes

City of L. A.	1180	1-18-92	1-18-42	Pasadena Avenue, Avenue 19 to Avenue 20.	The rate of fare, for any distance, along said road or its branches, one way, shall not exceed 5 cents for one passenger.	No
City of L. A.	6960	2- 6-02	2- 6-42	Vermont, Exposition Boulevard to 39th st.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	7246	5-28-02	6- 4-42	Macy, Mission Road to Bridge Street.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	9674	6-29-04	6-29-42	Pasadena Avenue, Avenue 20 to Avenue 26; Avenue 26, Pasadena Avenue to Griffin Avenue; Griffin Avenue, Avenue 26 to north of Avenue 39; Avenue 20, North Main to Pasadena Avenue; Lemar, Alhambra to North Main.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
[fol. 351]						
Co. of L. A.	55	6-17-02	7- 5-42	Angeles Mesa, 60th to Flower; also across Slauson, Pearl, Mineral and Walnut.	The rates of fares charged shall not exceed 2½ cents per mile, for any distance, provided, however, that no fare need be less than 5 cents.	No
106						
Co. of L. A.	56	6-17-02	7- 5-42	Market, Inglewood to Redondo; also across Prairie, Redondo, Locust, Spruce, Tamarack, Buckthorne and Arbor Vitae.	The rates of fares charged shall not exceed 2½ cents per mile, for any distance, provided, however, that no fare need be less than 5 cents.	No
City of L. A.	7406	8-12-02	8-13-42	Grand, Jefferson to Private Right of Way.	None.	No

Ordinance	Number	Date granted	Date of expiration	Route	Fare Clause	2% Tax Clause
City of L. A.	7413	8-18-02	8-18-42	Girard, Georgia to Yard.	None.	No
City of L. A.	8476	7-24-03	7-24-43	San Fernando Boulevard, Pasadena Avenue to Dayton Avenue; Dayton Avenue, San Fernando Boulevard to Museum Drive; Monte Vista, Avenue 50 to Avenue 61; Avenue 61, Monte Vista to Piedmont, Avenue 61 to Pasadena Avenue.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
Co. of L. A. 107	79	7-21-03	8-18-43	Santa Fe Avenue, Charter Boundary 1889 to 58th.	The rates of fare charged shall not exceed 10 cents for a single trip, one way, over said road and the rates of fare charged between the said South City boundary and Vernon Avenue and points intermediate between said last mentioned points shall not exceed 5 cents for a single trip, one way.	No
City of L. A.	45164	12- 7-22	12- 7-43	On 3rd Street, from Larchmont to westerly city limits.	The rate of fare to be charged under this franchise shall not be more than 5 cents for one continuous ride in the same general direction within the corporate limits of the city, except upon a showing before a competent authority, having jurisdiction over rates of fare, that such greater charge is justified.	Yes

City of L. A.	45194	12-13-22	12-13-43	On Girard, from 350 feet west of Georgia to 110 feet east of Sentous (freight only).	None.	No
Co. of L. A.	94	12-14-03	1- 5-44	Slauson, Slauson to Private Right of Way; South Park, Slauson to 300′ south.	None.	No

[fol. 352]

City of L. A.	9245	2-23-04	2-23-44	Monte Vista, Avenue 50 to point 650′ south.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
108						
City of L. A.	2123	4-30-94	4-30-44	Main, Spring to 10th; Lincoln Boulevard, North Broadway to Mission Road; 10th, Main to Broadway.	The rate of fare, for any distance, along said road or its branches, one way, shall not exceed 5 cents for one passenger.	No
City of L. A.	8398	6-20-03	6-20-44	9th, Grand View to Park View.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	46558	7- 6-23	7- 6-44	On 7th Street, from Hoover to Vermont Avenue.	The rate of fare to be charged under this franchise shall not be more than 5 cents for one continuous ride in the same general direction within the corporate limits of the city, except upon a showing before a competent authority, having jurisdiction over rates of fare, that such greater charge is justified.	Yes

Ordinance	Number	Date granted	Date of expiration	Route	Fare Clause	2% Tax Clause
City of L. A. 109	2269	8-13-94	8-13-44	3rd, Hill to Traction Avenue; Georgia, 11th to 16th; Hill, 3rd to 5th; 16th, Georgia to Burlington; Santa Fe Avenue, 2nd to 3rd; 3rd, Traction to Santa Fe Avenue; 8th, Olive to Figueroa; Burlington, 16th to 20th; 11th, Figueroa to Georgia.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	No
City of L. A.	46808	8-16-23	8-16-44	On Vermont Avenue, from the center line of 1st Street to center line of Monroe Street.	The rate of fare to be charged under this franchise shall not be more than 5 cents for one continuous ride in the same general direction within the corporate limits of the city, except upon a showing before a competent authority, having jurisdiction over rates of fare, that such greater charge is justified.	Yes
City of L. A.	46968	9- 7-23	9- 7-44	On Central Avenue, from a point 1600′ south of Merrill Avenue to 77th Street.	The rate of fare to be charged under this franchise shall not be more than 5 cents for one continuous ride in the same general direction within the corporate limits of the city, except upon a showing before a competent authority, having jurisdiction over rates of fare, that such greater charge is justified.	Yes

[fol. 353]

City of L. A. 110	46707	8- 2-23	9- 3-44	On Evergreen Street, from 1st to Brooklyn.	The rate of fare to be charged under this franchise shall not be more than 5 cents for one continuous ride in the same general direction within the corporate limits of the city, except upon a showing before a competent authority, having jurisdiction over rates of fare, that such greater charge is justified.	Yes
City of L. A.	2327	9-24-94	9-24-44	5th, Spring to Maple.	The rate of fare, for any distance, along said road or its branches, one way, shall not exceed 5 cents for one passenger.	No
City of L. A.	46969	9- 7-23	9- 7-44	West 8th Street, from Wilshire Harvard Heights Tract to Western Avenue.	The rate of fare to be charged under this franchise shall not be more than 5 cents for one continuous ride in the same general direction within the corporate limits of the city, except upon a showing before a competent authority, having jurisdirection over rates of fare, that such greater charge is justified.	Yes
City of L. A. 111	47861	11-20-23	11-20-44	On Beverly Boulevard, from Vermont to New Hampshire.	The rate of fare to be charged under this franchise shall not be more than 5 cents for one continuous ride in the same general direction within the corporate limits of the city, except upon a showing before a competent authority, having jurisdiction over rates of fare, that such greater charge is justified.	Yes

Ordinance	Number	Date granted	Date of expiration	Route	Fare Clause	2% Tax Clause
City of L. A.	2532	1- 6-95	1- 6-45	1st, Broadway to Los Angeles; 1st, San Pedro to Chicago; 1st, Point east of Chicago to Evergreen; Broadway, 1st to 7th; North Main, Plaza to Mission Road; Mission Road, North Main to Selig Boulevard; Olive, 6th to 5th; 5th, Olive to Spring; Figueroa, 6th to Washington; Grand Avenue, 7th to Jefferson; North Broadway, Ave. 18 to Lincoln B Boulevard; North Spring, Sunset Boulevard to Alpine Street; Spring, 4th to 7th; Washington, Figueroa to Hoover; Figueroa, 11th to 11th; 7th, Broadway to Alvarado; 6th, Olive to Figueroa; 9th, Spring to Lake.	The rate of fare, for any distance, along said road or its branches shall not exceed 5 cents for one passenger.	No
[fol. 354]						
Co. of L. A. 112	121	6- 6-05	6-15-45	Indiana, 1st to 5th.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	No
City of L. A.	2849	6-17-95	6-17-45	Hill, 5th to 8th; 8th, Hill to Olive.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	No

City of L. A.	49057	6-25-24	6-25-45	On Melrose Avenue, from Normandie to Western.	The rate of fare to be charged under this franchise shall not be more than 5 cents for one continuous ride in the same general direction within the corporate limits of the city, except upon a showing before a competent authority, having jurisdiction over rates of fare, that such greater charge is justified.	Yes
Co. of L. A.	125 O. S.	6-26-95	7-18-45	Vermont, 24th to Exposition; 24th, Hoover to Vermont.	The rate of fare, for any distance, along said road or its branches, one way, shall not exceed 5 cents for one passenger.	No
City of L. A.	3016	9- 2-95	9- 2-45	Macy, Main to Mission Road; Main, Sunset Boulevard to Temple.	The rate of fare, for any distance, along said road or its branches, one way, shall not exceed 5 cents for one passenger.	No
City of L. A.	3017	9- 4-95	9- 4-45	Hill, 8th to 16th; 16th, Hill to Georgia.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	No
113						
City of L. A.	3030	9- 7-95	9- 7-45	Hoover, 20th to 24th.	The rate of fare, for any distance, along said road or its branches, one way, shall not exceed 5 cents for one passenger.	No
Co. of L. A.	131 O. S.	9-11-95	9-27-45	Hoover, 7th to Wilshire; Wilshire, Hoover to Commonwealth; Commonwealth, Wilshire to 6th.	The rate of fare, for any distance, along said road or its branches, one way, shall not exceed 5 cents for one passenger.	No

Ordinance	Number	Date granted	Date of expiration	Route	Fare Clause	2% Tax Clause
Co. of L. A.	133 O. S.	9-24-95	10- 9-45	24th, Vermont to Normandie; Normandie, 24th to Adams; Adams, Normandie to Western.	The rate of fare, for any distance, along said road or its branches, one way, shall not exceed 5 cents for one passenger.	No.
City of L. A.	47961	2- 5-24	2- 5-45	On Belmont, from Temple to Palo Alto Street. (Spur track for terminal switching purposes only.)	None.	No
[fol. 355]						
City of L. A.	3151	11- 8-95	11- 8-45	7th, Rampart to Hoover.	The rate of fare, for any distance, along said road or its branches, one way, shall not exceed 5 cents for one passenger.	No
114						
Co. of L. A.	134	2-20-06	3-10-46	1st, Indiana to Rowan; Rowan, 1st to Hammel; Hammel, Rowan to Gage; Gage, Hammel to Ranch Line.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	51593	4-13-25	4-13-46	On 5th Street, from Olive to Flower.	The rate of fare to be charged under this franchise shall not be more than 5 cents for one continuous ride in the same general direction within the corporate limits of the city except upon a showing before a competent authority, having jurisdiction over rates of fare, that such greater charge is justified.	Yes

Co. of L. A.	139	4- 9-06	5- 1-46	6th, Normandie to Grammercy.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
City of L. A.	3899	10- 9-96	10-14-46	7th, Alvarado to Rampart.	The rate of fare, for any distance, along said road or its branches, one way, shall not exceed 5 cents for one passenger.	No
115						
City of L. A.	3920	11- 6-96	11- 6-46	Central, 3rd to 5th; Traction Avenue, 3rd to Merrick; Merrick, Traction Avenue to 4th; 4th, Merrick to Fresno; Fresno, 4th to 1st; 4th, Evergreen to Euclid.	The rate of fare, for any distance, along said road or its branches, one way, shall not exceed 5 cents for one passenger.	No
Co. of L. A.	160	2-11-07	2-27-47	3rd, Grammercy to Lucerne Boulevard.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
Co. of L. A.	161	2-11-07	2-27-47	Eagle Rock Avenue, Meridian Street to near Kulli Street.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
Co. of L. A.	162	2-18-07	3- 6-47	York Boulevard, Avenue 57 to Avenue 54.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
[fol. 356]						
Co. of L. A.	168	3-18-07	4- 5-47	Pico, Arlington to Mullen.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes
116						

Ordinance	Number	Date granted	Date of expiration	Route	Fare Clause	2% Tax Clause
Co. of L. A.	169	3-18-07	4- 5-47	3rd, Vermont, to Western; Western, 3rd to Melrose; Vermont, 3rd to 29rd (south bound track only).	The grantee * * * shall have the right to charge 5 cents, and no more, as fare, for any distance, over said road or its branches, one way.	Yes
Co. of L. A.	173	4- 6-07	5- 5-47	Hoover, Temple to Clinton; Clinton, Hoover to Virgil; Virgil, Clinton to Fountain; Fountain, Virgil to Edgemont.	The rate of fares charged shall not exceed 2½ cents per mile, for any distance, provided, however, that no fare shall be less than 5 cents.	Yes
City of L. A.	4221	5- 6-97	5- 6-47	Brooklyn Avenue, Bridge Street to Evergreen Avenue; Main, 2nd to 7th; Santa Fe Ave., near 4th to 4th; Mateo, 8th to 9th; 9th, Mateo to Santa Fe Avenue; Spring, 7th to 9th; 2nd, Main to Alameda.	Grantee shall have the right to charge 5 cents fare for one passenger, and no more, for a continuous single trip, one way, for any distance in the same direction, along the line herein described or any of its branches as herein described within the present city limits.	No
City of L. A. 117	4240	5-11-97	5-11-47	San Pedro, 4th to 5th; 1st, Los Angeles to San Pedro; San Pedro, 5th to 30th.	Grantee shall have the right to charge 5 cents fare for one passenger, and no more, for a continuous single trip, one way, for any distance in the same direction, along the line herein described.	No
Co. of L. A.	174	5- 6-07	5-25-47	Indiana, 5th to Stephenson.	The rate of fare, for any distance, over said road or its branches, one way, shall not exceed 5 cents for one passenger.	Yes

Co. of L. A.	206	5-17-09	6- 5-49	Stephenson, Indiana to Downey Road.	The grantee * * * shall have the right to charge 5 cents, and no more as fare, for any distance, over said road or its branches, one way.	Yes
Co. of L. A.	208	5-24-09	6-10-49	Washington, Arlington to Rimpau.	The grantee * * * shall have the right to charge 5 cents, and no more as fare, for any distance, over said road, one way.	Yes
City of L. A.	6245	5- 2-00	5- 2-50	Vermont, Exposition to Santa Barbara.	None.	No
Co. of L. A.	221	10-22-09	11- 7-59	Adams, Arlington to Thirty-third Avenue.	The grantee * * * shall have the right to charge 5 cents, and no more, as fare, for any distance, over said road and its branches, one way.	Yes
[fols. 357 & 358]						
City of Vernon	91	8-13-12	8-13-62	Vernon Avenue, Santa Fe to Alameda.	The rate of fare, for any distance, over said road or its branches, one way, within said city, shall not exceed 5 cents for one passenger.	Yes
118						
City of Huntington Park	301	12-30-12	1-29-63	Florence Avenue, Pacific Boulevard to Seville.	The rate of fare, for any distance, over said road or its branches, one way within said city, shall not exceed 5 cents for one passenger.	Yes
Co. of L. A.	827	2- 5-23	3- 5-63	4th, West City limits to La Brae Avenue.	None.	No
Co. of L. A.	1138	1-15-25	1-15-65	Across Ramona Boulevard, from end of Private Right of Way.	None.	No
City of Vernon	381	5-19-26	5-19-76	On Leonis Boulevard, from the east line of Tract 6452 to Downey Road.	None.	No

[fol. 359] Affidavit of Fred F. Ball for Intervenor City of Los Angeles

Affiant is employed as Valuation and Rate Engineer by the Board of Public Utilities and Transportation of the City of Los Angeles; has been engaged in engineering work for approximately twenty years with experience in construction, operation, maintenance, inventory and appraisal of public utility properties including steam and electric railroads; for eight years has participated in numerous studies regarding service, financial, operating, valuation, rate structure and traffic conditions of utilities in and about Los Angeles; is a graduate engineer of Purdue University, later engaged in construction work, was Assistant Master Mechanic with the Ohio Electric Railway and later Assistant Engineer in the Motive Power Department of the Pennsylvania Railroad, in 1921 was Assistant Engineer for California Railroad Commission in survey of Pacific Electric Railway, was later employed by the City of Los Angeles Harbor Department in 1923, 1924 and 1925, was valuation engineer of the City's Board of Public Utilities and Transportation, participated in joint street railway survey of City of Los Angeles, made special engineering studies for Pacific Electric Railway and Southern Pacific Railroad in 1926 relating to Los Angeles, and since 1926 has been in present position.

Affiant has participated in inquiries relating to valuation and conditions of Los Angeles Railway Corporation for the Railroad Commission.

Affiant is familiar with the properties and operations of plaintiff's railway and with plaintiff's rate proceeding before the Commission (Application No. 13323). He is familiar with general business conditions in and about Los Angeles and has made a study of trend of general business cycles there.

[fol. 360] One of the most fundamental factors in business conditions is population increase, requiring additional shelter, food, clothing, furniture, fuel, light, professional services, amusement, etc., with large dependence of business growth on increases in population. Yearly population increases for Los Angeles from 1910 to 1927, inclusive, are shown on Chart A, Exhibit 1, attached hereto. Affiant be-

lieves this chart to portray as correct and exactly yearly population increases as it is possible and practicable to estimate from any available source of information.

From 1920 to 1923 there was a marked yearly increase, due to world war conditions which preceded said period. The normal growth of the community having been materially retarded during the world war period, because of industrial developments in the east and the reluctance of persons to settle in California during the war, resulted in an influx during 1920-1923 over and above normal population increase and was partially caused by prosperous national conditions during 1918-1920. Since 1923 annual population increase has shown a downward trend also caused by war and post-war conditions and to some degree by the Florida boom, also because all cities after reaching a certain set population saturation point invariably develop a diminishing annual rate of increase.

Los Angeles with more than 1,000,000 population has virtually arrived at such a stage where the curve of such increase starts to flatten out logarithmically. Since 1923, however, a heavy normal yearly population increase is shown, with 1926 somewhat higher than 1924, 1925 and 1927. Affiant forsees no reason why such a heavy normal growth will not continue and believes that such will be the case,

The great influx of both temporary and permanent residents at the close of the war resulted in a shortage in all [fol. 361] types of buildings and public works, with a resultant upward trend in building permits and real estate transactions reaching its apex in 1923 as shown in Charts B and C, Exhibit 1 attached hereto. This resulted in a decidedly overbuilt condition in Los Angeles which is sufficient to approximate two year's conservative and normal growth in line with the past four years' experience. This has naturally effected general prosperity and persons dependent upon rents for income, as well as discouraging investors in such improvements, with resultant less work in building trades and less business in building materials.

Bank clearings and post office receipts (Charts D and E Exhibit 1) reflect definite cycles consistent with the other charts. Bank clearings are a very significant index of general business conditions.

Stock speculation in Los Angles from 1910 to 1927, inclusive (Chart F, Exhibit 1) shows three such cycles of

three years each between 1916 and 1924 with a somewhat reversed cycle in 1925 to 1927. The number of telephones and active gas meters in use and the trend of annual increases (Charts G and H, Exhibit 2) show similar trends consistent with the business trends in Exhibit 1.

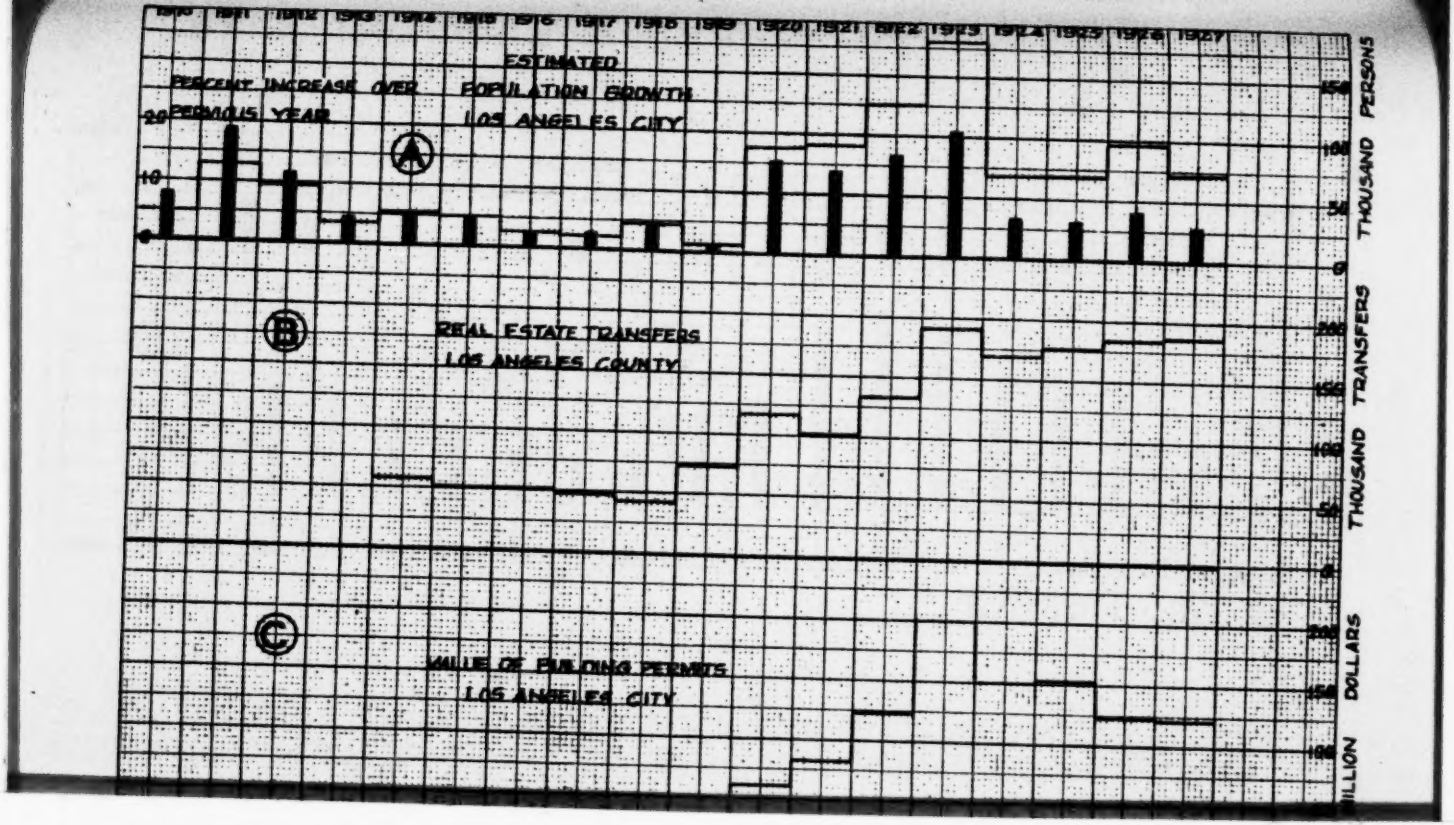
The number and per cent annual increase of the revenue passengers on plaintiff's system (Chart I Exhibit 2) illustrates similar characteristics particularly since 1916, but excepting 1925, which shows a small decrease.

The annual car miles operated over plaintiff's system with yearly increase or decrease (Chart J, Exhibit 2) fluctuates somewhat with a decrease in 1919, despite a substantial increase in passengers carried in that year (Chart I, Exhibit 2). This is because of economies effected by plaintiff on the rerouting of cars and reduced operating expenses and car miles operated inaugurated as a result of the California [fol. 362] Railroad Commission's Engineering Department's survey of plaintiff's operating conditions. There was an increase in car miles in 1920 with an increase in passengers carried.

Plaintiff's annual net income adjusted for 5% sinking fund depreciation is shown on Chart K, Exhibit 2. The cycle or trend of such yearly net income from 1913 to 1927, inclusice, corresponds favorably with the trends or cycles of other business activities shown on the charts of Exhibits 1 and 2. The information here used comes from the concurring opinion of Commissioner Carr in the Commission's Decision No. 19521.

Exhibit 3 reproduces the chart showing business conditions in Los Angeles and the southwest, 1888-1928, compiled by Los Angeles consulting economists, Eberle and Riggleman, and this depicts that firms ideas resulting from exhaustive study of various fluctuations or cycles of prosperity or depression above and below a long time normal trend of Los Angeles business conditions. This study compares favorably in trend with the trends shown in Exhibits 1 and 2 for the period covered by them.

Based on the normal trend of population, growth and trends of business activity, it appears that Los Angeles has nothing to fear in the way of a depression in general business conditions but that on the contrary with present general business bordering on what is considered a normal trend as established over a period of forty years, all indi-


ESTIMATED
POPULATION GROWTH
LOS ANGELES CITY
PERCENT INCREASE OVER
PREVIOUS YEAR
20
10
0
A
REAL ESTATE TRANSFERS
LOS ANGELES COUNTY
B
VALUE OF BUILDING PERMITS
LOS ANGELES CITY
C
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
THOUSAND PERSONS
THOUSAND TRANSFERS
MILLION DOLLARS

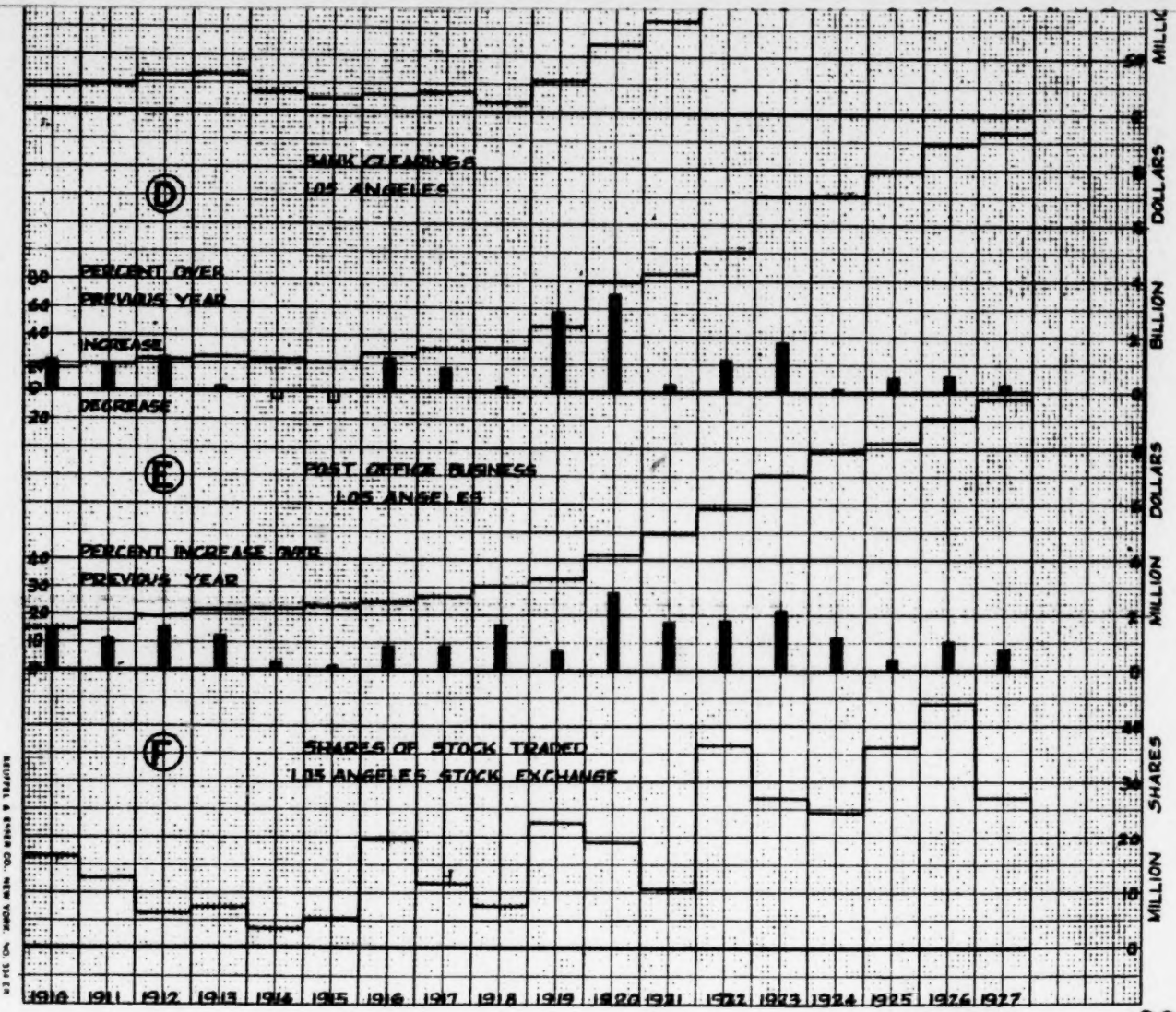
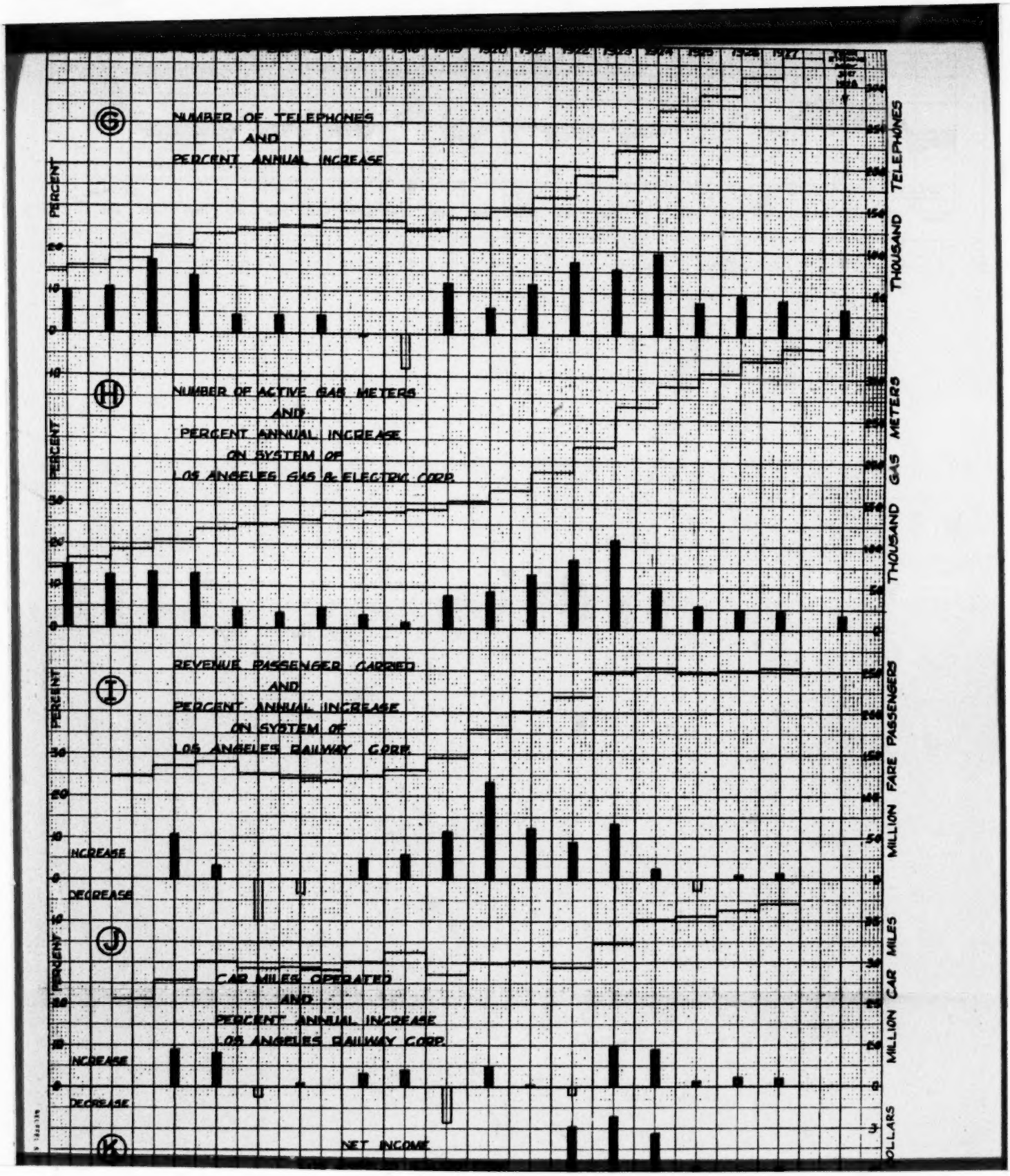
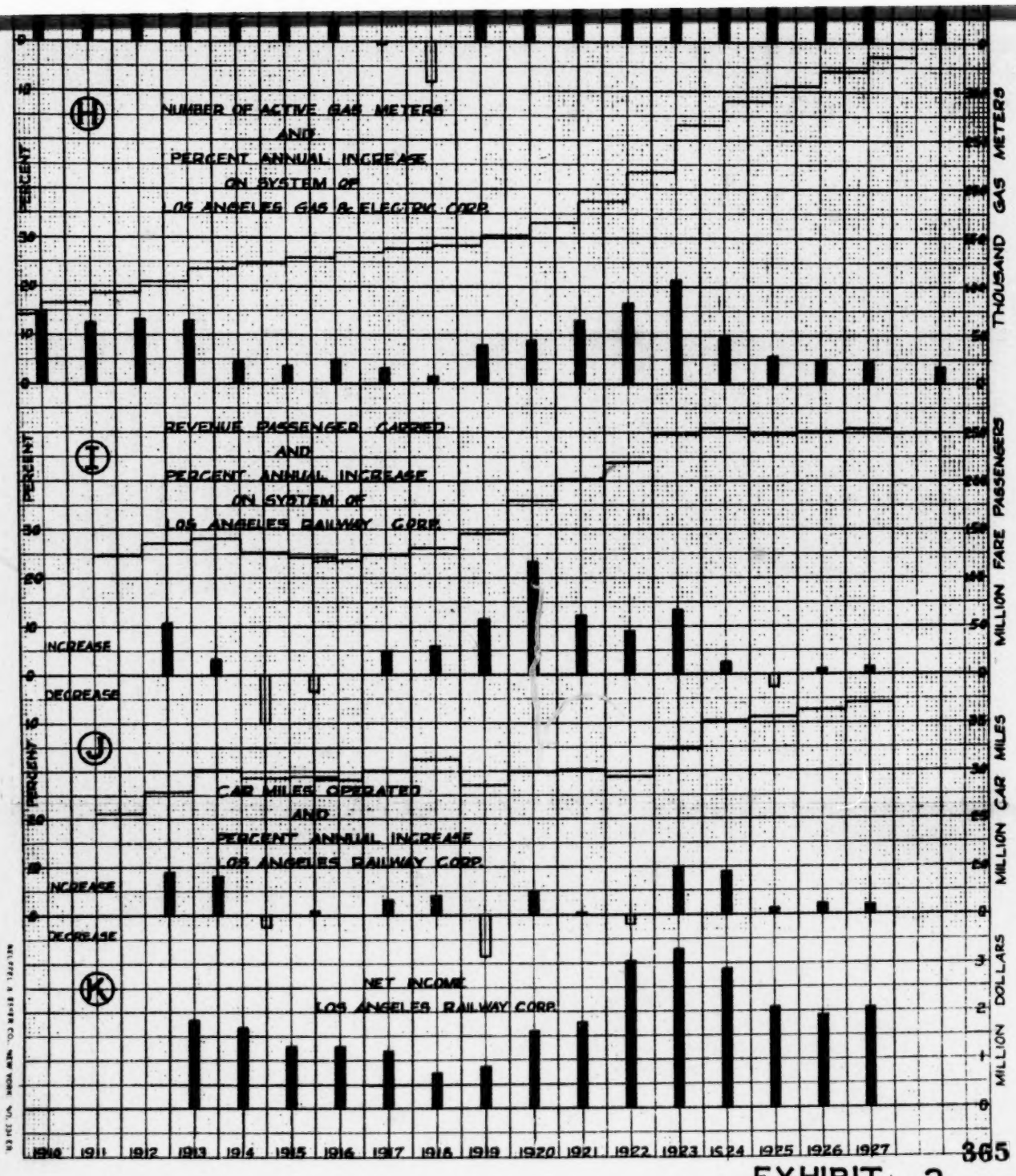

(D)
BANK CLEARINGS
LOS ANGELES
PERCENT OVER
PREVIOUS YEAR
INCREASE
DECREASE
BILLION DOLLARS
(E)
POST OFFICE BUSINESS
LOS ANGELES
PERCENT INCREASE OVER
PREVIOUS YEAR
MILLION DOLLARS
(F)
SHARES OF STOCK TRADED
LOS ANGELES STOCK EXCHANGE
MILLION SHARES
1910 1911 1912 1913 1914 1915 1916 1917 1918 1919 1920 1921 1922 1923 1924 1925 1926 1927

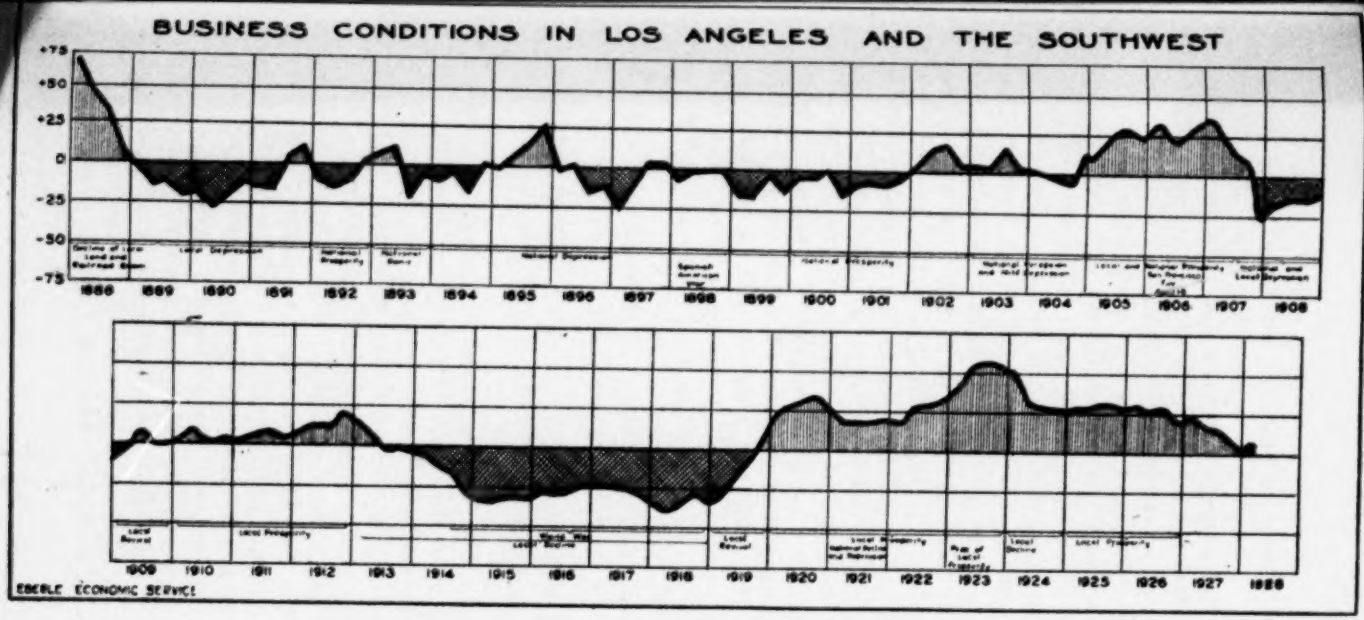
EXHIBIT I


G
NUMBER OF TELEPHONES
AND
PERCENT ANNUAL INCREASE
PERCENT
THOUSAND TELEPHONES
H
NUMBER OF ACTIVE GAS METERS
AND
PERCENT ANNUAL INCREASE
ON SYSTEM OF
LOS ANGELES GAS & ELECTRIC CORP.
PERCENT
THOUSAND GAS METERS
I
REVENUE PASSENGER CARRIED
AND
PERCENT ANNUAL INCREASE
ON SYSTEM OF
LOS ANGELES RAILWAY CORP.
PERCENT
INCREASE
DECREASE
MILLION FARE PASSENGERS
J
CAR MILES OPERATED
AND
PERCENT ANNUAL INCREASE
LOS ANGELES RAILWAY CORP.
PERCENT
INCREASE
DECREASE
MILLION CAR MILES
K
NET INCOME
DOLLARS



365

EXHIBIT 2



In reading this chart of business conditions, it must be remembered that the zero line indicates NORMAL PROGRESS *and the percentage lines indicate the degree of prosperity or depression. According to analysis, the indication for the new few years will be substantial progress with no unusual fluctuation from that condition. Throughout the period of years covered by the chart, building activity has had a steady growth.*

EXHIBIT 3

cations point to factors favoring an unward trend, if any change is to be experienced.

The end of 1930 should see the demand for buildings approximating the supply with substantial business progress in the interim and indications for upward trend of business conditions after 1930 on a more conservative, substantial and economic basis than heretofore in Los Angeles.

[fol. 363] Since the trend of net financial income of plaintiff as based on information above mentioned, has in the past followed the trend or cycle of general Los Angeles business conditions, affiant believes that it is not without the bounds of sound logic to assume that such will be the case in the future and with predominant influence indicating a decided upward trend in general business and prosperity cycles in Los Angeles during the latter half of the next five year period, with no indications of less than a substantial normal progress during the first half of said period, it follows that the plaintiff's average net income probably will constitute during that period a just, fair and compensatory return on the average value of its transportation system devoted to the public service.

(Here follow Exhibits 1, 2, and 3, marked side folio pages 364, 365, and 366)

[fols. 366a & 367] Affidavit of Edward Lee Crocker for Intervenor City of Los Angeles

Affiant is franchise engineer for the Board of Public Utilities and Transportation for the City of Los Angeles. He has made a tabulation from said Board's records of franchises granted by said City to plaintiff and its predecessors (Exhibit A attached hereto). This tabulation was made to classify said franchises with reference to their terms and conditions regarding fares and represents only active and operative franchises within the city limits, those granted by the county of Los Angeles appearing therein only where they are active and became operative within Los Angeles through annexation of county territory; spur track permits by the city were not included.

Page 1 of said tabulation shows six classes of franchises with reference to the terms and conditions relative to rates

of fare. Page 2 is a summary of the tabulation of each class of franchise, showing the number of franchise miles and the percentage each class bears to the total number of franchises and the percentage of franchise miles to each class of total franchise miles.

The total franchise miles granted is 136.24 allowing operation of 272.48 miles of single track. Of these franchises but 17.65% provide for changes of fare, practically all having been granted since 1920. 71.57% of said franchises do not provide for a change in the rate of fare, but specifically provide that the fare shall not exceed 5¢.

Exhibit B attached to this affidavit is a tabulation of all active and operative franchises within the city, arranged in chronological order of granting.

[fol. 368] Exhibit C attached hereto is a true and correct copy of Ordinance No. 2532 (N. S.) of the City of Los Angeles, dated December 24, 1894, a class B franchise under which plaintiff now operates a part of its system. Section 3 contains a provision providing that the rate of fare shall not exceed 5¢. Exhibit A shows that 16.03 franchise miles were granted by said franchise, which represents 32.06 single track miles.

Exhibit D attached hereto is a true and correct copy of Ordinance No. 27,419 (N. S.) approved April 23, 1913, a Class B ordinance, to City Railway Company under which plaintiff operates a portion of its system. Section 3 contains a condition providing that rate of fare shall not exceed 5¢ and Exhibit A shows that under said franchise .76 franchise miles were granted representing 1.52 single track miles now in operation.

Exhibit E attached hereto is a true and correct copy of Ordinance No. 59,600 passed December 7, 1927, a Class A franchise of the city to City Railway Company under which plaintiff operates part of its system. Section 2, sub-division 24 thereof, contains a condition providing for a rate of fare of 5¢ or one continuous ride in one general direction within the city limits, except upon a showing before a competent authority having jurisdiction over rates of fare that a greater fare is justified. Exhibit A shows that under this franchise .51 franchise miles were granted resulting in the operation of 1.02 single track miles.

Exhibit F is a true and correct copy of a franchise granted by the city on August 5, 1886, which Exhibit A shows is a Class E franchise and which contains a term relative to fares.

Exhibit G is a true and correct copy of County Minute Book 9, page 489, a Class F franchise, granted July 1, 1887, containing in its last paragraph a rate of fare provision.

[fol. 369] Exhibit H is Ordinance No. 173 (N. S. Co.) granted May 5, 1907, a Class D franchise, containing a rate of fare provision in Section 12.

The exhibits above mentioned follow:

[fol. 370]

EXHIBIT A

Standard Fare Provisions as Contained in Franchises Tabulated Hereafter and Classified as in "A" to "F," Inclusive

Class "A"

The rate of fare to be charged under this franchise shall not be more than five cents for one continuous ride in the same general direction within the corporate limits of the City, except upon a showing before a competent authority having jurisdiction over rates of fare, that such greater charge is justified.

Class "B"

That the rate of fare for any distance over said road or its branches, one way, shall not exceed five cents for one passenger.

Class "C"

No provision made for rate of fare.

Class "D"

That the rates of fare charged shall not exceed two and one-half cents per mile for any distance; provided, however, that no fare need be less than five cents.

Class "E"

That the rate of fare for passengers on said railroad shall never exceed ten cents. The said Board of Supervisors reserving the right to establish at any time, a fare not exceeding ten cents, and not less than five cents.

Class "F"

That the rate of fare for passengers on said railroad shall never exceed three cents per mile.

[fol. 371] Summary

Class	No. of franchises	Franchise miles	% No. of franchise	% of franchise miles
A	18	12.33	17.65	9.05
B	73	113.41	71.57	83.24
C	5	2.93	4.90	2.15
D	3	3.25	2.94	2.39
E	2	2.31	1.96	1.69
F	1	2.01	0.98	1.48
Total	102	136.24	100%	100%

[fol. 372] Legend

Abbreviations:

Co. Min. 9, P. 206 means County Minute Book 9, Page 206.
76 O. S. Co. " 76 Old Series County.
55 N. S. Co. " 55 New Series County.

All other numbers under heading "Franchise Number" indicate the number of the Los Angeles City Ordinance granting such franchises.

[fol. 373] Effective Franchises under Which the Los Angeles Railway Corporation Operates Within the City of Los Angeles

Class "A"

Fran. No.	Description	Date granted	Expires	Miles
39875	Broadway—Pico to Tenth	3- 2-20	2-21-37	.34
40213	Temple—Spring to Hoover	5- 3-20	5- 3-41	2.97
40466	Western—Melrose to Santa Monica	6-21-20	6-21-41	.50

Class "A"—Continued

Fran. No.	Description	Date granted	Expires	Miles
40734	Central Ave.—Merrill to 1600' South	8-25-20	8-25-41	.30
40735	South Park—Slauson to Merrill.	8-24-20	8-24-41	.51
41105	Pico—Flower to Hoover	12- 4-20	8- 5-36	1.12
45164	3rd—Larchmont to June	12- 7-22	12- 7-43	.59
46558	7th—Hoover to Vermont	7- 6-23	7- 6-44	.42
46707	Evergreen—1st to Brooklyn	8- 2-23	6-12-39	.24
46808	Vermont—Monroe to First	8-16-23	1- 3-33	.90
46968	Central Ave.,—1600' S. of Merrill to 77th Street	9- 7-23	8-25-41	.56
46969	8th—Harvard to Western	9- 7-23	1- 4-31	.25
47861	Beverly—New Hampshire to Vermont	1-19-24	1- 3-33	.07
49057	Melrose—Normandie to Western.	6-25-24	2-23-31	.48
51593	5th—Olive to Flower	4-13-25	1-15-45	.24
59600	5th—Flower to Boylston	1-21-28	5-16-40	.51
	5th—Flower to Beaudry	.....	.....	...
59601	7th—Broadway to Boyle	12- 7-27	4- 5-30	2.21
59602	Figueroa—5th to 6th	12- 7-27	12- 7-48	.12

[fol. 374] Effective Franchises under Which the Los Angeles Railway Corporation Operates Within the City of Los Angeles

Class "B"

Fran. No.	Description	Date granted	Expires	Miles
76 O.S. Co..	Central Ave.—S. Ch. Bdry. to Slauson Ave	8-22-91	8-22-41	2.49
	32nd & McClintock—Hoover to Vermont	.....	.....	....
125 O. S. Co..	Vermont—24th to Exposition	6-26-05	7-18-45	1.54
	24th—Hoover to Vermont	.....	.....	....
133 O. S. Co..	24th & Normandie & Adams-Vermont to Westehn	9-24-05	10- 9-45	1.12
121 N. S. Co..	Indiana—1st to 5th	6- 6-05	6-15-45	.40
134 N. S. Co..	6th—Vermont to Normandie.	1- 9-06	2- 1-36	.51
135 N. S. Co..	First—Indiana to Rowan	2-20-06	5-10-46	1.26
	Rowan—First to Hammel	.....	.....	....
	Hammel—Rowan to Gage	.....	.....	....
	Gage—Hammel to Ranch Line	.....	.....	....
139 N. S. Co..	6th—Normandie to Gramercy	4- 9-06	5- 1-46	.75
160 N. S. Co..	3rd—Gramercy to Plymouth	2-11-07	2-27-47	.60
161 N. S. Co..	Eagle Rock Ave.—Meridian to Buena Vista Ter	2-11-07	2-27-47	.94
162 N. S. Co..	York Blvd.—Ave. 57 to Ave. 54	2-18-07	3- 6-47	.32
168 N. S. Co..	Pico—Arlington to Mullen	4-05-07	4- 5-47	.95
169 N. S. Co..	Third—Vermont to Western.	3-18-07	4- 5-47	2.09
	Western—Third to Melrose.	.....	.....	....
	Vermont—3rd to 3rd W. Tr. only	.....	.....	....
174 N. S. Co..	Indiana—5th to Stephenson.	5- 6-07	5-25-47	.43
206 N. S. Co..	Whittier—Indiana to P. R/W.	5-17-09	6- 5-49	.88
208 N. S. Co..	Washington—Arlington to Rimpau	5-24-09	6-10-49	1.47

Class "B"—Continued

Fran. No.	Description	Date granted	Expires	Miles
221 N. S. Co..	Adams—Arlington to 33rd..	10-22-09	11- 7-59	2.14
862.....	Main—Temple to Second...	11-29-90	2-20-36	3.18
	" —7th to Spring.....	.....	.....	....
	" —10th to Broadway...	.....	.....	....
	" —Pico to Jefferson, to University Ave. to Exposition	.....	.....	....
942	Fourth—Broadway to Spring	3-23-91	8- 7-40	2.46
	First—Olive to Hill.....	.....	.....	....
	Olive, First & Bonnie Brae—Second to Ocean View....	.....	.....	....
	Alvarado—Sixth to Seventh.	.....	.....	....
	Santa Fe—First to Second..	.....	.....	....
	Second—Broadway to Spring	.....	.....	....
[fol. 375]	Spring—Second to Fourth..	.....	.....	....
971.....	Fifth—San Pedro to Central.	5- 1-91	10-13-40	5.70
	Broadway—7th to 10th.....	.....	.....	....
	Broadway—Sunset to Avenue 19.....	.....	.....	....
	Fifth—Central to San Pedro.	.....	.....	....
	Flower—10th to Washington.	.....	.....	....
	Santa Fe—3rd to Traction (Prod.)	.....	.....	....
	Spring—2nd to Temple.....	.....	.....	....
	Tenth—Broadway to Flower.	.....	.....	....
	Estrella, 23rd, Union & Hoover—Washington to 32nd	.....	.....	....
	Washington—Flower to Figueroa	.....	.....	....
986.....	2nd—Spring to Main.....	5-28-91	5-28-41	.23
	" —Alameda to Third....	.....	.....	....
1024.....	Central Ave.—2nd to 3rd...	8- 6-91	8- 6-41	2.23
	" " —Ceres to So. Charter Bdry.	.....	.....	....
1180.....	Pasadena Ave.—Ave. 19 to Ave. 20	1-18-92	1-18-42	.07
2022.....	Boyle—Stephenson to First.	2-14-94	2-14-29	.82
2123.....	Main—Spring to 10th.....	4-30-94	4-30-44	.57
	Lincoln Blvd.—Broadway to Mission Rd.....	.....	.....	....
	10th—Main to Broadway...	.....	.....	....
2209.....	Third St.—Hill to Traction	8-13-94	8-13-44	2.98
	Georgia—11th to 16th.....	.....	.....	....
	Hill—3rd to 5th.....	.....	.....	....
	16th—Georgia to Burlington.	.....	.....	....
	Santa Fe—2nd to 3rd.....	.....	.....	....
	3rd—Traction to Santa Fe.	.....	.....	....
	Burlington—16th to 20th...	.....	.....	....
	11th—Figueroa to Georgia..	.....	.....	....
2326.....	Ocean View & Alvarado—Bonnie Brae to 6th.....	9-21-94	9-21-40	.43
2327.....	Fifth—Maple to Spring....	9-24-94	9-24-44	.22
2532.....	First—Broadway to Los Angeles	1- 6-95	1- 6-45	16.06
	First—San Pedro to Chicago.	.....	.....	....
	" —P. R/W to Evergreen.	.....	.....	....
	Broadway—1st to 7th.....	.....	.....	....

Class "B"—Continued

Fran. No.	Description	Date granted	Expires	Miles
	Main—Plaza to Keith.....	.....	.....	....
	Fifth—Spring to Olive.....	.....	.....	....
	Figueroa—6th to Washington.	.....	.....	....
	Grand—7th to Jefferson....	.....	.....	....
	Broadway—Ave. 18 to Lincoln Park Ave.....	.....	.....	....
	No. Spring—Sunset to Alpine.	.....	.....	....
	Spring—4th to 7th.....	.....	.....	....
	Washington—Figueroa to Hoover	.....	.....	....
	Figueroa—11th to 11th.....	.....	.....	....
	9th—Spring to Lake.....	.....	.....	....
	7th—Broadway to Alvarado.	.....	.....	....
	Olive—5th to 6th.....	.....	.....	....
	6th—Olive to Figueroa.....	.....	.....	....
2849.....	Hill—5th to 8th.....	6-17-95	6-17-45	.38
[fol. 376]				
3016.....	Macy—Main to Mission....	9- 2-95	9- 2-45	.99
	Main—Plaza to Temple....	.....	.....	....
3017.....	Hill & 16th—8th to Georgia.	9- 4-95	9- 4-45	1.32
3030.....	Hoover—20th to 24th.....	9- 7-95	9- 7-45	.25
3899.....	7th—Alvarado to Rampart.	10- 9-96	10-14-46	.43
3151.....	7th—Rampart to Hoover..	11- 8-95	11- 8-45	.06
3920.....	Central Ave.—3rd to Ceres.	11- 6-96	11- 6-46	3.02
	Traction—3rd to Merrick...	.....	.....	....
	Merrick—3rd to 4th.....	.....	.....	....
	4th—Merrick to Fresno....	.....	.....	....
	Fresno—4th to 1st.....	.....	.....	....
	4th—Euclid to Evergreen...	.....	.....	....
4221.....	Brooklyn—Bridge to Evergreen	5- 6-97	5- 8-47	3.16
	Main—2nd to 7th.....	.....	.....	....
	Santa Fe—Traction to 4th..	.....	.....	....
	Mateo, 8th to 9th & Santa Fe.	.....	.....	....
	2nd—Main to Alameda.....	.....	.....	....
	Spring—7th to Main.....	.....	.....	....
4240.....	San Pedro—Fourth to Fifth.	5-11-97	5-11-47	2.34
	First—Los Angeles to San Pedro	.....	.....	....
	San Pedro—5th to 30th.....	.....	.....	....
6589.....	Jefferson—University to 4th Ave.	6- 4-01	6- 4-41	2.20
6688.....	Broadway—First to Temple.	9-10-01	9-10-41	3.89
	California—Hill to Bunker Hill	.....	.....	....
	Bunker Hill—California to Boston	.....	.....	....
	Boston—Bunker Hill to Figueroa	.....	.....	....
	Figueroa—Boston to Alpine.	.....	.....	....
	Alpine—Figueroa to Bellevue	.....	.....	....
	Bellevue—Alpine to Edgeware	.....	.....	....
	Edgeware Road—Bellevue to Douglas	.....	.....	....

Class "B"—Continued

Fran. No.	Description	Date granted	Expires	Miles
	Douglas—Edgeware to Kensington Road	.....	.....	....
	First—Hill to Broadway	.....	.....	....
	Hill Street—First to Third.	.....	.....	....
	Belmont—Temple to Second.	.....	.....	....
	Crown Hill, Boylston—Third to Flower	.....	.....	....
	Flower—Third to Sixth	.....	.....	....
6702	Adams—Western to Arlington	9-20-01	9-20-41	.54
7246	Brooklyn—Mission to Bridge St.	5-28-02	6- 4-42	.28
8312	6th—Boylston to Benton	5-16-03	5-16-40	1.42
8355	Main—32nd to Santa Barbara & Wall	5-28-03	5-28-40	.67
8380	First—Evergreen to Indiana.	6-12-03	6-12-39	.65
[fol. 377]				
8381	Whittier—Boyle to Indiana.	6-12-03	6-12-39	2.47
	Euclid—Stephenson to 4th	.....	.....	....
	Evergreen—4th to 1st	.....	.....	....
8398	9th—Grand View to Park View	6-20-03	6-20-44	.07
8400	Jefferson—Griffith to McKinley	6-24-03	6-24-36	2.73
	McKinley—40th to Jefferson.	.....	.....	....
	Jefferson—McKinley to Griffith	.....	.....	....
	Griffith—Jefferson to 14th	.....	.....	....
	14th and Sanford to 12th	.....	.....	....
	12th—Sanford to Main	.....	.....	....
8476	San Fernando Rd., Dayton Ave. & Marmion	7-24-03	7-24-43	3.51
	Way from Pasadena Ave. to pt. 1225'N. of Ave. 45	.....	.....	....
	Monte Vista & Piedmont fr. Ave. 50 to Pasadena	.....	.....	....
8897	Moneta—Jefferson to Slauson	11-24-03	11-24-36	2.11
9116	Broadway Place—10th to Main	1-18-04	1-18-37	.73
	Main—Broadway to Pico	.....	.....	....
	Pico—Broadway to Flower	.....	.....	....
9245	Marmion Way—650' S. of Ave. 50 to Ave. 50	2-23-04	2-23-44	.13
9674	Pasadena—Ave. 20 to Ave. 26 & Griffith	6-29-04	6-29-42	2.50
	Griffith Ave.—Ave. 36 to Ave. 39	.....	.....	....
	Ave. 20—Main to Pasadena.	.....	.....	....
	Lamar—Alhambra to Main.	.....	.....	....
9675	Wall—47th Pl. to 51st St	6-29-04	6-29-40	.26
9712	11th—Broadway to Figueroa	7-15-04	7-15-36	1.58
	" —Georgia to Hoover	.....	.....	....
9775	Columbia—2nd to Witmer & Crown Hill	7-29-04	7-29-41	.21
10321	Hooper Ave.—12th to 29th.	12-19-04	12-19-36	1.64
	12th—Stanford to Hooper	.....	.....	....
17285	Washington—La Salle to Arlington	12-20-08	10-20-29	.98

Class "B"—Continued

Fran. No.	Description	Date granted	Expires	Miles
17772.....	54th—Hoover to Dalton....	2-18-09	2-18-30	1.00
17950.....	Boyle—7th to Whittier....	4- 5-09	4- 5-30	.16
19535.....	9th—Park View to Vermont.	1- 4-10	1- 4-31	.82
	8th—Vermont to Catalina..	.....	.....	....
19736.....	Melrose—Heliotrope to Normandie	2-23-10	2-23-31	.29
20289.....	39th—Vermont to Western.	5-24-10	5-24-31	1.05
24015.....	Jefferson—Main to Griffith.	1- 3-12	1- 3-33	7.16
	" —McKinley to Central	.....	.....	....
[fol. 378]				
	38th—Central to Ascot....	.....	.....	....
	Vermont—1st to 3rd.....	.....	.....	....
	" —3rd to 3rd E. Tr. only	.....	.....	....
	Vermont 3rd to 24th.....	.....	.....	....
	Vernon—Alameda to Vermont	.....	.....	....
	Vermont—8th to 9th.....	.....	.....	....
26160.....	Main—Moneta to Slauson..	10-31-12	10-31-33	1.88
26297.....	Dayton & 9 crossings on Eagle Rock line.....	11-14-12	11-14-33	.13
26976.....	Vernon—Van Ness to Dalton.	2-19-13	2-19-34	.81
27120.....	Sunset—Main to Broadway.	3-18-13	10-13-40	.13
27418.....	10th—Hoover to Victoria...	4-23-13	4-23-34	2.37
27419.....	54th—Dalton to Bdry (1906).	4-23-13	4-23-34	.76
32180.....	Temple—Broadway to Hill	4-21-15	9-10-41	.14
32667.....	Evergreen—Brooklyn to Wabash	7-15-15	7-15-36	.75
	Wabash—Evergreen to Charter Boundary.....	.....	.....	....
33309.....	San Pedro & South Park—30th to Slauson.....	11-11-15	11-11-36	2.03
38536.....	Country Club Dr.—Victoria to near Rimpau.....	10-21-18	10-21-39	.60
	Victoria—Tenth to Country Club Drive.....	.....	.....	....

[fol. 379] Effective Franchises under Which the Los Angeles Railway Corporation Operates Within the City of Los Angeles

Class "C"

Fran. No.	Description	Date Granted	Expires	Miles
79 O. S. Co..	Santa Fe—Ch. Bdry. to 58th St.	7-21-03	8-18-43	1.70
94 N. S. Co..	South Park—Slauson to P. R/W.	1- 5-04	1- 5-44	.10
	Central Ave.—S. Ch. Bdry. to P. R/W.....	.....	.....	....
827 N. S. Co..	3rd—June to La Brea.....	3- 5-23	3- 5-63	.57
6245.....	Vermont—Exposition to Santa Barbara.....	5- 2-00	5- 2-50	.51
7406.....	Grand—Jefferson to P.R/W.	8-12-02	8-13-42	.05

[fol. 380] Effective Franchises under Which the Los Angeles Railway Corporation Operates Within the City of Los Angeles

Class "D"

Fran. No.	Description	Date Granted	Expires	Miles
55 N. S. Co..	Crossings, Slauson, Pearl, Mineral, Walnut.....	6-17-02	7- 5-42	.57
	Angeles Mesa—60th to Flower	.....	.....	....
56 N. S. Co..	Crossings, Prairie, Redondo, Low, Spruce, Tamarack, Buckthorn, Arbor Vitae.	6-17-02	7- 5-42	.67
	Market Street—Inglewood to Redondo	.....	.....	....
173 N. S. Co..	Hoover, Virgil & Fountain fr. Temple to Edgemont..	5- 5-07	5- 5-47	2.01

[fol. 381] Effective Franchises under Which the Los Angeles Railway Corporation Operates Within the City of Los Angeles

Class "E"

Fran. No.	Description	Date Granted	Expires	Miles
Co. M. B. 9 P. 341..	Washington—Hoover to Mariposa.....	1- 7-87	1- 7-37	.82
Co. Min. 9, P. 206..	Pico—Hoover to Manhattan	8- 5-86	8- 5-36	1.49

[fol. 382] Effective Franchises under Which the Los Angeles Railway Corporation Operates Within the City of Los Angeles

Class "F"

Fran. No.	Description	Date Granted	Expires	Miles
Co. M. 9, P. 489..	Vermont—Santa Barbara to 63rd.....	7- 1-87	7- 1-37	2.01

[fol. 383] EXHIBIT B

Effective Franchises under Which the Los Angeles Railway Corporation Operates Within the City of Los Angeles

Fran. No.	Date granted	Expires	Miles	Class
Co. Min. 9, P. 206.....	8- 5-86	8- 5-36	1.49	E
Co. M. B. 9, P. 341.....	1- 7-87	1- 7-37	.82	E
Co. M. 9, P. 489.....	7- 1-87	7- 1-37	2.01	F
862	11-29-90	2-20-36	3.18	B
942	3-23-91	8- 7-40	2.46	B
971	5- 1-91	10-13-40	5.70	B
986	5-28-91	5-28-41	.23	B

EXHIBIT B—Continued

Fran. No.	Date granted	Expires	Miles	Class
1024	8- 6-91	8- 6-41	2.23	B
76 O. S. Co	8-22-91	8-22-41	2.49	B
1180	1-18-92	1-18-42	.07	B
2022	2-14-94	2-14-29	.82	B
2123	4-30-94	4-30-44	.57	B
2269	8-13-94	8-13-44	2.98	B
2326	9-21-94	9-21-40	.43	B
2327	9-24-94	9-24-44	.22	B
2532	1- 6-95	1- 6-45	16.03	B
2849	6-17-95	6-17-45	.38	B
125 O. S. Co	6-26-95	7-18-45	1.54	B
3016	9- 2-95	9- 2-45	.99	B
3017	9- 4-95	9- 4-45	1.32	B
3030	9- 7-95	9- 7-45	.25	B
133 O. S. Co	9-24-95	10- 9-45	1.12	B
3151	11- 8-95	11- 8-45	.06	B
[fol. 384] 3899	10- 9-96	10-14-46	.43	B
3920	11- 6-96	11- 6-46	3.02	B
4221	5- 6-97	5- 8-47	3.16	B
4240	5-11-97	5-11-47	2.34	B
6245	5- 2-00	5- 2-50	.51	C
6589	6- 4-01	6- 4-41	2.20	B
6688	9-10-01	9-10-41	3.89	B
6702	9-20-01	9-20-41	.54	B
7246	5-28-02	6- 4-42	.28	B
55 N. S. Co	6-17-02	7- 5-42	.57	D
56 N. S. Co	6-17-02	7- 5-42	.67	D
7406	8-12-02	8-13-42	.05	C
8312	5-16-03	5-16-40	1.42	B
8355	5-28-03	5-28-40	.67	B
8380	6-12-03	6-12-39	.65	B
8381	6-12-03	6-12-39	2.47	B
8398	6-20-03	6-20-44	.07	B
8400	6-24-03	6-24-36	2.73	B
79 O. S. Co	7-21-03	8-18-43	1.70	C
8476	7-24-03	7-24-43	3.51	B
8897	11-24-03	11-24-36	2.11	B
94 N. S. Co	1- 5-04	1- 5-44	.10	C
9116	1-18-04	1-18-37	.73	B

EXHIBIT B—Continued

Fran. No.	Date granted	Expires	Miles	Class
9245	2-23-04	2-23-44	.13	B
9674	6-29-04	6-29-42	2.50	B
9675	6-29-04	6-29-40	.26	B
9712	7-15-04	7-15-36	1.58	B
9775	7-29-04	7-29-41	.21	B
[fol. 385] 10321	12-19-04	12-19-36	1.64	B
121 N. S. Co	6- 6-05	6-15-45	.40	B
134 N. S. Co	1- 9-06	2- 1-36	.51	B
135 N. S. Co	2-20-06	3-10-46	1.26	B
139 N. S. Co	4- 9-06	5- 1-46	.75	B
160 N. S. Co	2-11-07	2-27-47	.60	B
161 N. S. Co	2-11-07	2-27-47	.94	B
162 N. S. Co	2-18-07	3- 6-47	.32	B
169 N. S. Co	3-18-07	4- 5-47	2.09	B
168 N. S. Co	4-05-07	4- 5-47	.95	B
173 N. S. Co	5- 5-07	5- 5-47	2.01	D
174 N. S. Co	5- 6-07	5-25-47	.43	B
17285	10-20-08	10-20-29	.98	B
17772	2-18-09	2-18-30	1.00	B
17950	4- 5-09	4- 5-30	.16	B
206 N. S. Co	5-17-09	6- 5-49	.88	B
208 N. S. Co	5-24-09	6-10-49	1.47	B
221 N. S. Co	10-22-09	11- 7-59	2.14	B
19535	1- 4-10	1- 4-31	.82	B
19736	2-23-10	2-23-31	.29	B
20289	5-24-10	5-24-31	1.05	B
24015	1- 3-12	1- 3-33	7.16	B
26160	10-31-12	10-31-33	1.88	B
26297	11-14-12	11-14-33	.13	B
26976	2-19-13	2-19-34	.81	B
27120	3-18-13	10-13-40	.13	B
27418	4-23-13	4-23-34	2.37	B
27419	4-23-13	4-23-34	.76	B
32180	4-21-15	9-10-41	.14	B
32667	7-15-15	7-15-36	.75	B
[fol. 386] 33309	11-11-15	11-11-36	2.03	B
38536	10-21-18	10-21-39	.60	B
39875	3- 2-20	2-21-37	.34	A
40213	5- 3-20	5- 3-41	2.97	A

EXHIBIT B—Continued

Fran. No.	Date granted	Expires	Miles	Class
40466	6-21-20	6-21-41	.50	A
40735	8-24-20	8-24-41	.51	A
40734	8-25-20	8-25-41	.30	A
41105	12- 4-20	8- 5-36	1.12	A
45164	12- 7-22	12- 7-43	.59	A
827 N. S. Co	3- 5-23	3- 5-63	.57	C
46558	7- 6-23	7- 6-44	.42	A
46707	8- 2-23	6-12-39	.24	A
46808	8-16-23	1- 3-33	.90	A
46968	9- 7-23	8-25-41	.56	A
46969	9- 7-23	1- 4-31	.25	A
47861	1-19-24	1- 3-33	.07	A
49057	6-25-24	2-23-31	.48	A
51593	4-13-25	1-15-45	.24	A
59600	1-21-28	5-16-40	.51	A
59601	12- 7-27	4- 5-30	2.21	A
59602	12- 7-27	12- 7-48	.12	A

[fol. 387] EXHIBIT "C"

Ordinance No. 2532 (New Series)

An Ordinance Granting to W. D. Larabee and His Assigns the Right to Construct and Operate an Electric Street Railway Over Certain Streets in the City of Los Angeles

The Mayor and Council of the City of Los Angeles do ordain as follows:

Section 1. That the right of way, also the right to change the present tracks of the petitioner into a double or single track electric railway, be and the same is hereby granted to W. D. Larabee, and assigns, over and along the streets of Los Angeles now occupied and being used as a horse car railroad, in this ordinance named, for a period of fifty years from and after the approval hereof; this being for the purpose of changing the above mentioned horse car line known as the Kuhrts street line into an electric railway, which grants the privilege of construction and maintaining and

operating a single or double track electric street railway thereon, together with the right to construct all switches, turnouts, power houses, and all other appliances, properties, structures and attachments that may be necessary for the purpose of operating said road and enabling it to be as efficient as the best electric road; provided that such road shall be at all times constructed, maintained and operated according to the provisions of this ordinance.

The streets and portions of streets over which this right is granted are particularly described as follows, to wit:

Commencing at the intersection of Temple and Main streets; thence northerly on Main street to the intersection of New Main street; thence northeasterly along New Main street to the Los Angeles river; thence across Kuhrts-street bridge, now owned by the petitioners, to Kuhrts street; thence easterly on Kuhrts street to the Mission road; thence [fol. 388] northeasterly along Mission road to the city limits. Also commencing at the intersection of New Main street and San Fernando street; thence from the said intersection northerly on San Fernando street along the east side of the tracks of the Southern Pacific Company to the east end of the viaduct.

Together with the right to make the necessary curves and connections at street intersections; said tracks to be laid as nearly equidistant from the center of the streets as possible, and as near each other as proper regard for safety will allow.

Provided, that in all cases where this franchise is granted over streets now occupied by other lines of street railway owned by persons or corporations, whether named herein or not, that said W. D. Larabee, and his assigns, shall have the right to operate over any and all such tracks in accordance with and limited only by the statutes of the State of California applicable thereto; and in case the gauge of the tracks of said other persons or corporations shall not conform to the gauge of the tracks of said W. D. Larabee, or his assigns, then the said W. D. Larabee, or his assigns, shall be permitted to lay a third rail over the distance traversed by said two roads jointly.

Also the right to change, equip and operate by electricity, all the lines of cable tracks, particularly known and described as the Grand avenue and Downey avenue divisions, and the Boyle Heights and Seventh Street divisions, and

now owned and operated as a cable railway by said Los Angeles Consolidated Electric Railway Company, to wit:

Commencing at the intersection of Grand avenue and Jefferson street; thence northerly on Grand Avenue to Seventh street; thence easterly on Seventh street to Broadway; thence northerly on Broadway to First street; thence easterly on First street to Spring street. Also commencing at the intersection of Bellevue avenue and Upper Main street; thence northerly on Upper Main street to San Fer-[fol. 389]nando street; thence easterly on San Fernando street to Olympia street; thence easterly on Olympia street to and across the Los Angeles river to Downey avenue; thence easterly on Downey avenue to Pritchard street. Also commencing at the intersection of Alvarado and Seventh streets; thence easterly on Seventh street to Grand avenue. Commencing at the intersection of First and Spring streets; thence easterly on First street to Chicago street; thence northerly on Chicago street to First street; thence easterly on First street to Evergreen avenue and the right to change at any time all or any portion of any of the lines now owned by said Company, and operated as horse railways to wit:

Commencing at west city limits on Washington street; thence easterly on Washington street to Figueroa street; thence northerly on Figueroa street to Pearl street; thence northerly on Pearl street to Sixth street; thence easterly on Sixth street to Olive street; thence northerly on Olive street to Fifth street; thence easterly on Fifth street to Spring street; Also commencing at the west city limits on Ninth street; thence easterly on Ninth street to Pearl street; thence northerly on Pearl street to Ninth; thence easterly on Ninth street to Spring street; thence northerly on Spring street to Fourth street.

Section 2. And the said grantee and his assigns shall use in the construction of said road the best material, including a rail, weighing not less than forty (40) pounds per yard, such as is used on first class roads, which rails shall be satisfactory to the City Council and no rails shall be laid by virtue of this franchise until a plan thereof shall be submitted to said Council and approved by them and shall pave or macadamize the said road between the tracks and for two feet on each side thereof, with the same material used by the city, upon the streets over which said runs re-

spectively, and keep the same constantly in repair, flush with the street and provided with suitable crossings; and [fol. 390] and shall make the road conform at all times to the established grade of the streets; all grades and repairs to be made under the instructions and to the satisfaction of the Street Superintendent of said city. In case the said grantee fails to comply with the instructions given by said officers for ten days after service thereof upon the agent of said grantee resident in Los Angeles, he, the said officer, to enter upon the road of the said grantee and to do the work as ordered by the Council, said officer to keep an itemized account of the cost of said work, which said grantee, by the acceptance of this franchise, hereby agrees to pay immediately upon its presentation to said grantee's local agent stationed in Los Angeles.

Provided further, that the cars shall be operated upon said lines at intervals of not more than fifteen minutes apart each way during the daytime and until 10 o'clock at night. From 10 o'clock P. M. until 11:30 P. M. the service shall not be less than thirty minutes apart.

Provided further, that cars shall be run over the road constructed under this franchise during every day, unless prevented by the elements.

Provided further, that said grantee, or assigns, shall construct all necessary flumes and culverts for the free passage of water under the tracks of said railway where the same naturally flows; and that all curves, aqueducts, turnouts, switches shall be constructed under plans and specifications approved by the City Engineer.

And it is understood that said grantee shall have the right to excavate and remove portions of the street necessary to properly construct said road and to erect needful apparatus, boilers, engines, etc., to properly equip and run the road.

[fol. 391] It is understood that the city in making the grant of this franchise, expressly reserves the right to pave, macadamize, renew or sewer any of the said streets, or to lay gas, water or other pipes therein, such work to be done so as to injure said work as little as possible.

Provided further, that the cars upon said road shall not be allowed to stand on the street intersections or on main streets in such manner as to obstruct the use of said streets by vehicles.

Section 3. That the rate of fare for any distance along said road or its branches, one way, shall not exceed 5 cents for one passenger, and shall transfer at connecting points on the lines of said grantee or his assigns or lines which said grantee or his assigns may operate so as not to return passengers in the general direction from which they came, and that persons under eighteen years of age who attend the public schools of said city, shall be required to pay but half fare, provided said pupils shall purchase their tickets in quantities of at least one dollar's worth at a time; such tickets to be available only between the hours of 8 a. m. and 6 p. m., in actual passage to and from school; and said grantee, or assigns, shall sell such tickets whenever requested to do so by a pupil who shall present a certificate from a teacher, approved by the Superintendent of Schools of the city, that he or she is such pupil of said schools.

And further, that said grantee, or assigns, shall carry policemen and firemen and letter carriers, Mayor and Councilmen, free on said cars when on duty, subject at all times to the rules of the road.

Provided further, that said grantee, or assigns, shall on or before December 15th, of each year, pay to the City Tax and License Collector, the annual license upon each car fixed by the existing ordinances of said city.

[fol. 392] Section 4. The above rights and privileges are granted upon the express condition that work upon that portion known and described as the Kuhrts-street line of said road and the line from Estrella avenue to the west city limits on Washington street shall be commenced within sixty days, and completed, equipped and in operation as an electric road for its full length within eight months from the date hereof. The remaining portion of said railroad line shall be fully equipped and completed as provided herein within two years from the date of the approval of this ordinance. Provided further, that this franchise is granted upon each and every condition herein set forth, and failure to comply with each or any of said conditions shall work an immediate forfeiture of all the rights herein granted.

Section 5. The said grantee or assigns is hereby required to file a written acceptance of the terms and conditions hereof with the City Clerk of said city within thirty days after the passage of this ordinance, together with a bond of not less than ten thousand dollars for the faithful carrying out of the terms of this franchise.

Section 6. The City Clerk shall certify to the passage of this ordinance and shall cause the same to be published once in the Los Angeles Evening Express and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the Council of the City of Los Angeles at its meeting of December 24th, 1894.

C. A. Luckenbach, City Clerk.

[fol. 393] I hereby certify that the above ordinance was transmitted by me to the Mayor on Thursday, the 27th day of December, 1894, and that the same was not returned to me by him with his objections in writing within ten days thereafter and that the same has by reason of that fact become valid and effective as provided by Section 38 of the City Charter.

C. A. Luckenbach, City Clerk.

[fol. 394] EXHIBIT "D"

Ordinance No. 27419 (New Series)

An ordinance granting to the City Railway Company of Los Angeles, a corporation, a franchise to construct and, for a period of not to exceed twenty-one years, to operate and maintain a double-track electric street railroad over, upon and along certain public streets in the City of Los Angeles

The Mayor and Council of the City of Los Angeles do ordain as follows:

Section 1. That a franchise is hereby granted to the City Railway Company of Los Angeles, a corporation, hereinafter designated as grantee, to construct and for a period

of not to exceed twenty-one years, and as hereinafter provided, to operate and maintain a double track electric street railroad over, along and upon the following described route, to wit:

Beginning at the intersection of Fifty-fourth Street and Denker Avenue; thence westerly along Fifty-fourth Street to the westerly boundary line of the City of Los Angeles.

Sec. 2. That said electric street railroad shall be constructed and at all times operated and maintained and said franchise is hereby granted and shall at all times be exercised and enjoyed in accordance with and subject to all and every of the terms and conditions contained in this ordinance, and not otherwise.

1st. That the term of said franchise shall be twenty-one years; provided, however, that if any electric street railroad franchise with which the franchise hereby granted is an extension or a connection, shall expire prior to the expiration of said period of twenty-one years, then the franchise hereby granted shall expire concurrently with such other franchise unless sooner terminated as herein pro-
[fol. 395] vided, and said franchise shall be subject, however, to the right of the City of Los Angeles, which right is hereby expressly reserved to said city, to terminate said franchise at any time, as hereinafter provided, and to purchase and take over, or to find a purchaser for the property of such utility used, owned or operated by said grantee in the exercise of said franchise, free and clear of all limitations, restrictions, liens or encumbrances whatsoever. Said franchise may be terminated by said city at any time after three years from the date the ordinance granting said franchise becomes effective by delivering to said grantee a notice in writing of such termination at least one year prior to the date upon which the city proposes to exercise its right to terminate said franchise, together with a notice in writing of the intention of said city to purchase and take over said property of such utility at the termination of said grant, or to find a purchaser therefor, upon payment by said city or said purchaser to said grantee owning such property at the fair value of the property of such utility as hereinafter provided.

2nd. That in the event that the City of Los Angeles shall terminate said franchise and shall notify said grantee in writing of its intention to purchase and take over the property of such utility, or to find a purchaser therefor, as herein provided, the grantee shall, at the period fixed in said notice for the termination of said franchise and upon payment or tender of payment by the city, or by said purchaser, to said grantee of the purchase price of the property of such utility, as hereinafter provided, transfer the title of said plant and property by good and sufficient written instrument to said city, and the payment or tender of payment by said city, or said purchaser, to said grantee [fol. 396] of the said purchase price of the property of such utility, shall, ipso facto, operate to transfer the title to said property to said city, or to said purchaser, and the grantee shall forthwith surrender to said city, or to said purchaser, and the city, or said purchaser, may forthwith take and hold possession of the property of such utility.

That in the event that said franchise shall expire by operation of law and without written notice of the termination thereof by said city as aforesaid said city shall have the right, at its option, declared not more than one year before the expiration of the franchise term of twenty-one years, which right and option is hereby reserved to said city, to purchase and take over the property of such utility, and in the event that said city shall so exercise its right under said option the said city shall pay to said grantee the fair value of the property of such utility as herein provided.

3rd. The term "fair value" used herein shall be construed to mean the reasonable value of the property of such utility having regard to its condition of repair and its adaptability and capacity for the use for which it shall have been originally intended; provided, however, that no allowance shall be made for any value derived from said franchise nor on account of god will, going concern, earning power, increased cost of reproduction, or increased value of any property owned or operated by said grantee under said franchise or in connection therewith.

4th. That the value of the property of such utility proposed to be purchased upon the termination of said fran-

chise shall be determined by a board of three arbitrators, of whom one shall be appointed by the city, one by the grantee and the third by the two arbitrators so appointed. Said arbitrators shall be appointed within thirty days after the declaration by the city of its option to purchase the property of such utility or to find a purchaser there- [fol. 397] for. In the case said arbitrators fail to make and file an award within the time hereinafter limited, a new board of three arbitrators shall be appointed as hereinbefore prescribed. The board of arbitrators shall immediately upon the appointment of its members enter upon the discharge of its duties. Any vacancy in the board of arbitrators shall be filled by the party who made the original appointment to the vacant place. In the event the grantee shall fail to appoint an arbitrator within thirty days after the declaration by the city of its option to purchase the property of such utility or to find a purchaser therefor, or in the event of the death or resignation of such arbitrator so appointed, and said grantee shall fail to appoint an arbitrator to fill such vacancy within ten days thereafter, or in the event the two arbitrators appointed by the city and the grantee as hereinbefore provided shall fail to appoint a third arbitrator within sixty days after the declaration by the city of its option to purchase the property of such utility or to find a purchaser therefor, then upon application made either by the city or by said grantee, after five days' notice in writing to the other party, such arbitrator shall be appointed by the presiding judge of the Superior Court of the State of California, in and for the County of Los Angeles, and the arbitrator so appointed shall have the same powers and duties as though he had been appointed in the manner hereinabove prescribed. The award of the arbitrators must be made and filed with the City Clerk of said city within three months after their appointment and a majority of the arbitrators who agree thereto may make such award. The amount of valuation of the property of such utility determined by the Board of Arbitrators shall be paid to said grantee in lawful money of the United States, less an amount equivalent or sufficient to offset or pay any outstanding, unsettled, unpaid or [fol. 398] disputed debts, claims or uncompleted or unsettled contracts, or pending damage suits or judgments

against or affecting said grantee, or any encumbrances or defects in title which may constitute a charge or lien upon the property of such utility. The amount so deducted or reserved shall be placed by the city, if the property of such utility be purchased by said city, in a special fund in the City Treasury for the purpose of liquidating or satisfying said unpaid debts, claims, contracts, suits, judgment, encumbrances, charges or liens; and after the same have been liquidated and settled the said city or said purchaser, as the case may be, shall pay to said grantee the balance of said amount remaining in said fund.

5th. Whenever said city or said purchaser shall have paid to said grantee, as above provided, the value of the property of such utility, less such sum to be placed in said fund as above provided, then said grantee shall, by good and sufficient written instrument, transfer to said city, or to said purchaser, as the case may be, all of the property of such utility, together with all franchise rights, appurtenances, renewals, additions, extensions, connections and repairs thereto, including all and every part of the property constituting the property of such utility, together with all claims and rights held, owned, operated and claimed under and by virtue of the franchise herein proposed to be granted, free and clear of all encumbrances, claims or liens whatosever, excepting such as have not been liquidated as hereinbefore provided.

6th. That the street railroad constructed and operated under said franchise shall be used only for the transportation of passengers and United States mail.

7th. That the tracks to be laid under said franchise shall not exceed three feet six inches in width between the rails, [fol. 399] and shall be placed as nearly equidistant from the center of the street as possible and as near each other as proper regard for safety will allow.

8th. That in all cases where said franchise is granted over streets now occupied by other lines of street railroad the grantee thereof shall have the right to operate over any and all the tracks of such other lines subject to the provisions and limitations of the statutes of the State of California applicable thereto.

9th. That said grantee shall use in the construction and maintenance of the tracks of said electric street railroad grooved girder rails weighing not less than ninety (90) pounds per yard and not less than seven inches in height, which shall be of such pattern and dimensions as shall be approved by the Board of Public Works.

Said tracks shall be laid, constructed and maintained in all respects under the supervision and to the satisfaction of the Board of Public Works; provided, however, that nothing herein contained shall be construed to require the use of grooved girder rails on track crossings, frogs, switches or switch mates or on curves where guard rails are used; and provided further that when the track is laid the said grantee shall comply with all the provisions of Ordinance No. 20,916 (New Series), approved September 21, 1910, in the method of track construction and of paving the usual right of way.

The rails of said track shall be so laid as to be continuously welded, bonded and otherwise securely fastened together.

10th. Said grantee shall at its own cost and expense pave or macadamize the said street between the rails, between the tracks and for two feet on each side thereof with the same material and in the same manner and under the same [fol. 400] specifications as other portions of said streets are now or may hereafter be improved and shall also at such times as future street improvements are made simultaneously improve said streets between the rails of said track, between the tracks and for a distance of two feet on each side thereof in the same manner and under the same specifications as the balance of said streets are improved, and shall keep the same constantly so paved or macadamized and in repair flush with the street and provided with suitable crossings, and shall make the roadbed conform at all times to the established grade of said streets, provided that upon any regrading or other improvement of any of said streets, said roadbed and rails shall by said grantee be placed upon and made to conform to the official grade. All repairs and grades shall be made under and conform to the instructions and directions of and to the satisfaction of the Board of Public Works of said city. In case the said grantee shall fail to comply with the in-

structions given by said Board of Public Works for a period of ten days after service of notice thereof upon said grantee or upon the manager or agent of said grantee in Los Angeles, it, the said Board of Public Works, shall enter upon the road of said grantee and do the work as ordered by said Board, and said Board shall keep an itemized account of the said work, which the said grantee by acceptance of said franchise agrees to pay immediately upon its being presented to said grantee or to such manager or agent stationed in the City of Los Angeles, and such cost shall be a lien upon the plant and property of said grantee.

11th. That said gantee shall construct all necessary culverts and flumes for the free passage of water under the tracks of said street railroad wherever and whenever necessary, and that all such flumes, culverts, and all curves, intakes, turnouts and switches shall be constructed at the [fol. 401] points designated by and in accordance with plans and specifications approved by said Board of Public Works.

12th. That the City of Los Angeles in granting said franchise expressly reserves the right to pave, repave, macadamize, remacadamize, sewer, resewer or renew any of said streets or to lay gas, water or other pipes or conduits therein, said work to be done so as to injure said road as little as possible.

13th. That cars shall be run each way over the whole length of the road constructed under said franchise at intervals of not more than twenty minutes between the hours of six o'clock in the morning and seven o'clock at night, and of not more than thirty minutes between the hours of seven o'clock at night and twelve o'clock at night, each day during the term of said franchise unless prevented by the elements, riots, strikes or unavoidable cause.

14th. That cars shall be operated over said road with sufficient frequency to carry and provide all passengers applying for transportation thereover with seats, excepting in times of extraordinary and unforeseen amounts of travel, and that said cars shall at all times and in all respects be as efficiently constructed and conveniently equipped as the

cars in use upon the best electric street railroads in the City of Los Angeles.

15th. That the cars upon said road shall not be allowed to stand on any street or street intersection in such a manner as to obstruct the use of said street by vehicles or pedestrians.

16th. That the grantee of said franchise shall and will at all times upon and after the completion of said road during the operation of the same, and without extra charge issue to and receive from passengers going in one direction transfers good for continuous passage over and upon any and every other line and lines or any other road or roads within said city which said grantee does now or may [fol. 402] hereafter own, control, operate or have a controlling interest in; and provided, as a further condition, that said grantee shall and will at all times as aforesaid, issue or cause to be issued to said passengers without extra charge a similar transfer over any and every other line or lines which said grantee does now or may hereafter own, control, operate or have a controlling interest in as aforesaid, to, over and along the road operated and maintained under said franchise.

17th. That the rate of fare over said road or its branches one way shall not exceed five (5) cents for one passenger.

18th. That persons under the age of eighteen years who attend any public school in said city shall be required to pay but half fare, provided that said pupils shall purchase their tickets in quantities of at least one dollar's worth at a time, such tickets to be available only between the hours of seven o'clock a. m. and six o'clock p. m., in actual passage to and from school, and that said grantee shall sell such tickets whenever requested so to do by a pupil who shall present a certificate from a teacher, approved by the principal of such school that he or she is a pupil of said school.

19th. That said grantee shall at all times carry all regular and special policemen, police officers, firemen and letter carriers while on duty, the Mayor and members of the City Council and of the Board of Public Works, Fire Commissioners, Public Service Commissioners, and Civil Serv-

ice Commissioners, the Health Commissioners, the members of the Board of Education, City Superintendent of Schools, Members of the Board of Public Utilities, and the Directors of the Public Library, and the members of such bodies, boards, commissions and such officers and employees of said city as may by law succeed any of said bodies, boards, commissions, officers or employees hereinbefore mentioned, [fol. 403] free over said road and over every other road or roads within said city which said grantee does now or may hereafter own, control or operate, subject at all times to reasonable regulations as said grantee may prescribe.

[fol. 404] 20th. That said grantee shall during the life of said franchise pay to the City of Los Angeles upon each car, such license as is now or may hereafter be fixed by the ordinances of said city.

21st. That said grantee shall during the life of said franchise, pay to the City of Los Angeles in lawful money of the United States, two per cent (2%) of the gross annual receipts of such grantee arising from the use, operation or possession of said franchise. No percentage shall be paid for the first five years succeeding the date of said franchise, but, thereafter such percentage shall be payable annually, and said franchise shall be forfeited upon any failure, refusal or neglect of said grantee to make any such payment. Provided, that if the road for which said franchise is granted shall be an extension of an existing system of street railroad, then the gross receipts shall be estimated to be one half of the proportion of the total gross receipts of said system which the mileage of said extension bears to the total mileage of the whole system, and said estimate shall be conclusive as to the amount of the gross receipts of said extension.

It shall be the duty of the grantee of said franchise to file with the City Clerk of the City of Los Angeles at the expiration of six years from the date of the granting of said franchise, and at the expiration of each and every year thereafter, a statement verified by the oath of said grantee or by the oath of the manager or presiding officer of said grantee, showing the total gross receipts and gross earnings collected or received by said grantee during the preceding twelve months from all traffic over any part of the

line for the construction and operation of which said franchise is granted or over any part of the system of street railroad of which it may be an extension, and from all other [fol. 405] sources, and within ten days after the time for filing the aforesaid statement, it shall be the duty of said grantee to pay to the City Treasurer of the City of Los Angeles the aggregate sum of the said percentage upon the amount of the gross annual receipts arising from the use, operation or possession of said franchise, determined and computed in the manner hereinbefore provided.

Any neglect, omission or refusal by said grantee to file said verified statement or to pay the said percentage of the gross annual receipts at the time or in the manner hereinbefore provided, shall ipso facto work a forfeiture of said franchise and of all rights thereunder to the City of Los Angeles.

22nd. That the work of constructing said road shall be commenced in good faith within not more than six months from the date the ordinance granting said franchise becomes effective, and shall be continuously prosecuted thereafter in good faith and without unnecessary or unavoidable intermission or delay; that said work of construction shall be completed within not more than fifteen months after the ordinance granting said franchise becomes effective; and that if said work be not so commenced, prosecuted or completed within the time or in the manner aforesaid, said franchise shall be forfeited.

23rd. That said grantee shall not sell, transfer or assign said franchise, nor shall any interest therein or any right or privilege thereunder be in whole or in part transferred, leased, assigned or otherwise disposed of without the consent of the City of Los Angeles expressed by ordinance, and any such sale, lease, assignment or other disposition of said franchise shall be evidenced by an instrument in writing filed in the office of the City Clerk of the City of Los [fol. 406] Angeles, and nothing contained in said franchise shall be construed to grant to said grantee any right to sell, transfer, lease, or assign said franchise or any interest therein or any right or privilege granted thereby, except in the manner aforesaid.

24th. That no uncompleted or other portion of said franchise shall be abandoned by the grantee thereof except with the consent of the council. Such abandonment shall be evidenced by an instrument in writing requesting such abandonment, filed in the office of the City Clerk, and such consent shall be granted by ordinance and not otherwise. In the event that any poles, wires, ties, rails, tracks or other materials have been erected, laid, constructed or maintained on that portion of the road sought to be abandoned, the council may in the ordinance consenting to such abandonment require said grantee requesting such consent, at its own cost and expense to remove such poles, wires, ties, rails, tracks or other materials and restore such street to proper condition, and may prescribe the time within which such removal shall be completed and the manner and method by which such restoration shall be accomplished, and the failure, refusal or neglect to remove such poles, rails, ties, wires, tracks or other materials, or to restore such street, highway or other public place to proper condition within the time and in the manner so required by the Council, shall ipso facto work a forfeiture of said franchise and the whole thereof.

25th. That the grantee of said franchise shall be subject to the right of the city to make all regulations which shall be necessary to secure in the most ample manner, the safety, welfare, convenience, health, accommodation of the public, including the right to pass and enforce ordinances to protect the public from danger or inconvenience in the operation of said street railroad and the right to make and en- [fol. 407] force all such regulations as shall be reasonably necessary to secure adequate, sufficient and proper service and accommodation for the people, and to insure their safety, health, welfare, comfort and convenience.

26th. Whenever in this ordinance granting said franchise, any right or power is conferred upon, or duly imposed upon the Board of Public Works or the City Council, or the City Clerk, or the City Treasurer of the City of Los Angeles, such right and power shall inure to and be exercised by or upon such body, board, commission or officer of said city as may by law hereafter succeed to the rights, powers and duties of said Board of Public Utilities, said

Board of Public Works, said City Council, said City Clerk, and said City Treasurer, respectively.

27th. The provisions of said franchise and all rights, obligations and duties thereunder shall inure to and be binding upon the grantee and his or its successors or assigns.

28th. That said grantee will be required to file, and said franchise is granted on the condition that the grantee shall file a written acceptance of the franchise granted and an agreement to comply with the terms and conditions herein set forth with the City Clerk of said City within ten days after the date this ordinance becomes effective.

29th. That any neglect, failure or refusal of said grantee or its successors or assigns, to comply with any of the conditions and stipulations contained in said franchise shall thereupon immediately ipso facto, effect a forfeiture thereof, and the said city, by its City Council, may thereupon declare the said franchise forfeited, and may exclude said grantee or its successors or assigns from further use of said streets of said city under said franchise and said grantee or its successors or assigns shall thereupon im- [fol. 408] mediately surrender all rights in and to the same, and said franchise shall become and remain null, void and of no effect.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and cause the same to be published once in The Los Angeles Daily Journal.

I hereby certify that the foregoing ordinance was introduced at the meeting of the Council of the City of Los Angeles of April 15, 1913, and was passed at its meeting of April 22, 1913.

Chas. L. Wilde, City Clerk.

Approved this 23rd day of April, 1913.

Geo. Alexander, Mayor.

4-29. 1t.

[fol. 409] EXHIBIT "E"

Ordinance No. 59600

An ordinance granting to City Railway Company of Los Angeles, a corporation, a franchise to construct and, for a period of not to exceed twenty-one (21) years, to operate and maintain a double-track electric street railroad upon Fifth Street from Flower Street to Beaudry Avenue and through the intersection of Beaudry and Boylston Streets, in the City of Los Angeles

The People of the City of Los Angeles do ordain as follows:

Section 1. That a franchise is hereby granted to City Railway Company of Los Angeles, a corporation, its successors and assigns, to construct, and, for a period of not to exceed twenty-one (21) years, and as hereinafter provided, to operate and maintain a double track electric street railroad upon, over and along Fifth Street from Flower Street to Beaudry Avenue and through the intersection of Beaudry and Boylston Streets, in the City of Los Angeles, together with the right to construct and maintain all necessary switches between the tracks of said electric street railroad, and the necessary curves for connections at street intersections with other lines of electric street railroads owned, controlled or operated by the grantee and such other appliances and apparatus as may be necessary to properly equip, operate and maintain said street railroad.

Sec. 2. That the terms and conditions upon which this franchise is granted and subject to which the same shall at all times be held and exercised by said grantee are as follows:

1st. That the term of said franchise shall be twenty-one (21) years; provided, however, that if any electric street railroad franchise with which the franchise hereby granted is an extension or connection, shall expire prior to the expiration of said term, then the franchise hereby granted [fol. 410] shall expire concurrently with such other franchise, and said franchise hereby granted shall be subject

to the right of the City of Los Angeles, which right is hereby expressly reserved to said city, to terminate said franchise at any time as hereinafter provided, and to purchase and take over, or to find a purchaser for the property of such utility used, owned or operated by said grantee in the exercise of the franchise hereby granted, free and clear of all limitations, restrictions, liens or encumbrances whatsoever. Said franchise may be terminated by said city at any time after one year from the date this ordinance becomes effective by delivering to said grantee a notice in writing of such termination at least six (6) months prior to the date which the city proposes to terminate said franchise at any time subsequent to the expiration of said period of one year, said notice shall be delivered by said city at least one year prior to the date upon which the city proposes to exercise its right to terminate said franchise, together with a notice in writing of the intention of said city to purchase and take over said property of such utility at the termination of said grant, or to find a purchaser therefor, upon the payment by said city or said purchaser to said grantee owning such property under such franchise of the fair value of the property of such utility, as hereinafter provided.

2nd. That in the event the City of Los Angeles shall terminate said franchise and shall notify said grantee in writing of its intention to purchase and take over the property of such utility or to find a purchaser therefor, as herein provided, the grantee shall, at the period fixed in said notice of the termination of said franchise and upon payment or tender of payment by the city or by said purchaser to said grantee of the purchase price of said property of such utility as hereinafter provided, transfer the title to said property by good and sufficient written instrument to said city, or said purchaser, and the payment or tender of payment by said city, or said purchaser, to said [fol. 411] grantee of the said purchase price of the property of such utility shall, ipso facto, operate to transfer the title to said property to said city, or to said purchaser, and the grantee shall forthwith surrender to said city or to said purchaser, and the city or said purchaser, may forthwith take and hold possession of the property of such utility.

3rd. That in the event said franchise shall expire by operation of law and without notice of the termination thereof by said city, said city shall have the right, at its option, declared not more than one year before the expiration of the franchise term of twenty-one years, which right and option is hereby reserved to said city, to purchase and take over the property of such utility, and in the event that said city shall so exercise its right under said option the said city shall pay to said grantee the fair value of the property of such utility, as herein provided.

4th. The term "fair value" as used herein shall be construed to mean the reasonable value of the property of such utility, having regard to its condition of repair and its adaptability and capacity to the use to which it shall have been originally intended; provided, however, that no allowance shall be made for franchise value nor on account of good will, going concern, earning power, increased cost of reproduction or increased value of right of way.

5th. That the valuation of the property of such utility proposed to be purchased upon the termination of said franchise shall be determined by a board of three arbitrators, of whom one shall be appointed by the city, one by the grantee, and the third by the two arbitrators so appointed. Said arbitrators shall be appointed within thirty days after the declaration by the city of its option to purchase the property of such utility, or to find a purchaser therefor. In case said arbitrators fail to make and file an award within the time hereinafter limited, a new board [fol. 412] of three arbitrators shall be appointed as hereinbefore prescribed. The board of arbitrators shall immediately upon the appointment of its members, enter upon the discharge of its duties. Any vacancy in the board of arbitrators shall be filled by the party who made the original appointment to the vacant place.

6th. In the event the grantee shall fail to appoint an arbitrator within thirty days after the declaration by the city of its intention to exercise its option to purchase the property of such utility or to find a purchaser therefor, or in the event of the death or resignation of such arbitrator so appointed, and such grantee, or its successors or assigns, shall fail to appoint an arbitrator to fill such va-

cancy within ten days thereafter, or in the event the two arbitrators appointed by the city and the grantee, as hereinbefore provided, shall fail to appoint a third arbitrator within sixty days after the declaration of the city of its option to purchase the property of such utility, or to find a purchaser therefor, then upon application made either by the city or by said grantee after five days' notice in writing to the other party, such arbitrator shall be appointed by the presiding Judge of the Superior Court of the State of California, in and for the County of Los Angeles, and the arbitrator so appointed shall have the same powers and duties as though he had been apointed in the manner hereinabove prescribed.

7th. The award of the arbitrators must be made and filed with the City Clerk of said city within three months after their appointment, and a majority of the arbitrators who agree thereto may make such award. The amount of the valuation of the property of such utility determined by the board of arbitrators shall be paid to said grantee in lawful money of the United States.

8th. Whenever the city or said purchaser, shall have paid to said grantee as above provided, the value of the property [fol. 413] of such utility, then said grantee shall, by good and sufficient written instrument, transfer to the city, or to said purchaser, as the case may be, all of the property of such utility, together with all franchise rights, appurtenances, renewals, additions, extensions, connections and repairs thereto, together with all claims and rights held, owned, operated and claimed under and by virtue of the franchise herein granted, free and clear of all encumbrances, claims or liens whatsoever.

9th. That the street railroad constructed and operated under said franchise shall be used only for the transportation of passengers and United States mail.

10th. That the tracks to be laid under said franchise shall not exceed three feet, six inches in width between the rails, and shall be placed as nearly equi-distant from the center of the street as practicable and as near each other as a proper regard for safety will allow.

11th. That in all cases where said franchise is granted over streets now occupied by other lines of street railroad the grantee thereof shall have the right to operate over any and all the tracks of such other lines subject to the provisions and limitations of the statutes of the State of California applicable thereto.

12th. Grantee shall, in order to secure proper traffic conditions, do such regrading and repaving outside the usual right of way, and do such other work as may be required by the Board of Public Works.

13th. Grantee shall, wherever the tracks are laid in a paved street, or wherever the adjoining portion of the street shall hereafter be paved, comply, with the provisions of Ordinance No. 29,121 (New Series), approved February 3, 1914, and all ordinances amendatory thereof, in method of track construction and paving of the usual railway right of way.

[fol. 414] 14th. Grantee shall use in the construction of said tracks grooved girder rails not less than 7″ in height of such pattern and dimensions as shall be approved by the Board of Public Utilities and Transportation or in lieu thereof, such other rail as may be approved by said Board.

15th. Grantee shall construct all tracks to grades which may from time to time be approved by the Board of Public Works.

16th. Grantee shall improve the entire space between lines parallel with and two feet outside the outermost rails of the track or tracks on the streets traversed in the same manner and under the same specifications as said streets are now improved, and at such times as future street improvements are installed, grantee shall simultaneously with such street improvements similarly improve the above mentioned space.

17th. Grantee shall submit all plans for curves and turnouts to the Board of Public Works for approval, copies of which plans shall be filed with the City Engineer, and before constructing any connection with existing railway, grantee shall secure a permit therefor from the City Council and shall, wherever required by the Board of Public

Works in order to secure proper traffic conditions at such curves and turnouts, reconstruct such curb and curb returns and do such regrading and repaving outside the usual right of way and such other work as may be so required by said Board.

18th. Grantee shall construct and maintain all culverts or storm drains necessary to allow the free passage of storm water under the tracks constructed under this franchise at such places and of such size and material as may at any time be designated by the Board of Public Works, the plans for which have first been approved by said Board.

19th. Grantee shall, in the event of abandonment of said railroad track or tracks, remove said abandoned track within one month thereafter, and reconstruct the pavement [fol. 415] and other street improvements adjacent to said track so that the work shall join and be continuous with the work done in adjoining portions of the street; all of said work shall be done under the supervision and to the satisfaction of the Board of Public Works. Failure to use this track for a period of six months shall, for this purpose, constitute abandonment.

20th. That the City of Los Angeles in granting said franchise expressly reserves the right to grade, regrade, improve, pave, repave, macadamize, remacadamize, sewer or resewer or renew any of said streets, or to lay gas, water or other pipes therein, said work to be done so as to injure said road as little as possible.

21st. That cars shall be operated over said road with sufficient frequency to carry and provide all passengers applying for transportation thereover with seats, excepting in times of extraordinary and unforeseen amounts of travel, and that said cars shall at all times and in all respects be as efficiently constructed and conveniently equipped as the cars in use upon the best electric street railroads in the City of Los Angeles.

22nd. That the cars upon said road shall not be allowed to stand on any street or any street intersection in such a manner as to obstruct the use of the said street by vehicles or pedestrians.

23rd. That the grantee shall and will at all times during the operation of said road and without extra charge, issue to and receive from passengers going in one direction, transfers good for continuous passage over and upon any and every other line or lines or any other road or roads within said city, which said grantee does now or may hereafter own, control, operate, or have a controlling interest in; and provided, as a further condition, that said grantee shall and will at all times as aforesaid, issue or cause to be issued to said passengers without extra charge similar transfers [fol. 416] over any and every other line or lines which said grantee does now or may hereafter own, control or operate or have a controlling interest in as aforesaid to, over and along the road operated and maintained under said franchise.

24th. The rate of fare to be charged under this franchise shall not be more than five cents for one continuous ride in the same general direction within the corporate limits of the city, except upon a showing before a competent authority having jurisdiction over rates of fare, that such greater charge is justified.

25th. That persons under the age of eighteen years who attend any public school in said city shall be required to pay but half fare, provided that said pupils shall purchase their tickets in quantities of at least one dollar's worth at a time, such tickets to be available only between the hours of seven o'clock a. m. and six o'clock p. m., in actual passage to and from school, and that said grantee shall sell such tickets whenever requested so to do by a pupil who shall present a certificate from a teacher approved by the principal of such school that he or she is a pupil of said school.

26th. That said grantee shall at all times carry all regular and special policemen, police officers, firemen and letter carriers while on duty, the Mayor and members of the City Council and of the Board of Public Works, Fire Commissioners Public Service Commissioners, Police Commissioners, Park Commissioners, and Civil Service Commissioners, the Health Commissioner, the members of the Board of Education, City Superintendent of Schools, members of the Board of Public Utilities and Transportation and the Directors of the Public Library, the Railway Engineers of the

Department of Public Utilities and Transportation and the members of such bodies, boards, commissions and such officers and employees of said city as may by law succeed any of said bodies, boards, commissions, officers or employees hereinbefore mentioned, free over said road and over any [fol. 417] other road or roads within said city which said grantee does now or may hereafter own, control or operate, subject at all times to reasonable regulations as said grantee may prescribe.

27th. That the said grantee shall during the life of said franchise, pay to the City of Los Angeles in lawful money of the United States, two per cent of the gross annual receipts of such grantee, arising from the use, operation or possession of said franchise. Such percentage shall be payable annually, and said franchise shall be forfeited upon any failure, neglect or refusal by said grantee to make any such payments; provided, that if the road for which said franchise is granted shall be an extension of an existing system of street railroad then the gross receipts shall be estimated to be one half of the proportion of the total gross receipts of said system which the mileage of said extension bears to the total mileage of the whole system, and said estimate shall be conclusive as to the amount of the gross receipts of said extension.

28th. It shall be the duty of the grantee of such franchise to file with the City Clerk of the City of Los Angeles at the expiration of one year from the time of the granting of said franchise for the previous calendar year, and at the expiration of each succeeding calendar year thereafter, for the previous calendar year, a statement verified by the oath of said grantee or by the oath of the manager or presiding officer of said grantee showing the total gross receipts and gross earnings collected or received by said grantee during the preceding calendar year from all traffic over any part of the line for the construction and operation of which said franchise is granted, or over any part of the system of street railroad of which it may be an extension, and from all other sources, and within ten days after the time for filing the aforesaid statement it shall be the duty of said grantee to pay to the City Treasurer of the City of Los Angeles the aggregate sum of the said percentage [fol. 418] upon the amount of the gross annual receipts

arising from the use, operation or possession of said franchise, determined and computed in the manner hereinbefore provided.

29th. Any neglect, omission or refusal by said grantee to file said verified statement or to pay the said percentage of the said gross annual receipts at the times or in the manner hereinbefore provided, shall ipso facto work a forfeiture of said franchise and of all rights thereunder to the City of Los Angeles.

30th. That the work or constructing said road shall be commenced in good faith within not more than ninety (90) days from the date on which this Ordinance becomes effective, and shall be continuously prosecuted thereafter in good faith and without unnecessary or avoidable intermission or delay; that said work of construction shall be completed within not more than one hundred twenty (120) days thereafter; that if said work be not so commenced, prosecuted or completed within the times or in the manner specified, said franchise shall be forfeited.

31st. That said franchise hereby granted shall be granted upon the express agreement, understanding and condition that said grantee shall and will allow and permit any person, firm or corporation, or the City of Los Angeles, and each and every one of them owning, operating or using a street railroad or street railroad track or tracks that may be or can be conveniently joined to or connected with said street railroad track to join and connect such street railroad tracks with the aforesaid street railroad tracks at his, its or their own cost and expense, and to use the same in like manner as said grantee is authorized to do by said franchise, provided, however, that the justly proportionate share of the cost of such street railroad tracks and the justly proportionate share of the cost of maintaining such street railroad tracks shall be paid by all and singular and each and every one of the persons, firms or corporations [fol. 419] including the City of Los Angeles, and by said grantee for the use of said street railroad tracks as aforesaid upon, across, over or along the same.

32nd. The grantee shall not sell, transfer or assign said franchise, nor shall any interest therein or any right or privilege thereunder be, in whole or in part, transferred, leased, assigned or otherwise disposed of without the con-

sent of the City of Los Angeles expressed by ordinance, and any such sale, lease assignment or other disposition of said franchise shall be evidenced by an instrument in writing filed in the office of the City Clerk of the City of Los Angeles, and nothing contained in said franchise shall be construed to grant to said grantee any right to sell, transfer, lease or assign said franchise or any interest therein or any right or privilege granted thereby, except in the manner aforesaid.

33rd. That no uncompleted or other portion of said franchise shall be abandoned by the grantee thereof except with the consent of the Council. Such abandonment shall be evidence by an instrument in writing requesting such abandonment filed in the office of the City Clerk, and such request shall be granted by ordinance and not otherwise. In the event that any poles, wires, ties, rails, tracks or other materials have been erected, laid, constructed or maintained on that portion of the route sought to be abandoned the Council may in the ordinance consenting to such abandonment, require the person, firm or corporation requesting such consent, at his or its own cost and expense to remove such poles, wires, ties, rails, tracks or other materials and restore the street to proper condition and may prescribe the time within which such removal shall be completed and the manner and method by which such restoration shall be accomplished, and the refusal, failure or neglect to remove such poles, wires, ties, rails, tracks or other materials, or [fol. 420] to restore such street, highway or other public place to proper condition within the time and in the manner so required by the Council, shall ipso facto work a forfeiture of said franchise and the whole thereof.

34th. Whenever in this ordinance any right or power is conferred upon or duty imposed upon the Board of Public Utilities and Transportation, or the Board of Public Works or the City Council or the City Clerk or the City Treasurer of the City of Los Angeles, such right and power shall inure to and be exercised by and such duty shall be imposed by or upon such body, board, commission or officer of said city as may by law hereafter succeed to the rights, powers and duties of said Board of Public Utilities and Transportation, said Board of Public Works, said City Council, said City Clerk and said City Treasurer, respectively.

35th. That the Board of Public Utilities and Transportation Commissioners shall have power to order extensions of the facilities hereby and herein authorized, after hearing as provided in the charter and ordinances of said city relative thereto, and the grantee of this franchise shall, by its acceptance thereof, agree to comply with every such order. Provided, that when such extension of facilities is for construction or operation outside of the limits of the original franchise or permit to which it will connect, the Council of the City of Los Angeles shall first grant such additional franchise or permit rights as may be required to cover such extensions.

36th. The provisions of said franchise and all rights, obligations and duties thereunder shall inure to and be binding upon the grantee and its successors or assigns.

37th. That the grantee shall be required to file, and said franchise is hereby granted on the condition that the grantee shall file a written acceptance of the franchise [fol. 421] granted and an agreement to comply with the terms and conditions therein set forth, with the City Clerk of said city within thirty days after the date this ordinance becomes effective.

38th. That any neglect, failure or refusal of said grantee, or its successors or assigns to comply with any of the conditions and stipulations contained in said franchise shall thereupon immediately, ipso facto, effect a forfeiture thereof, and the said city, by its City Council, may thereupon declare the said franchise forfeited, and may exclude said grantee or his or its successors and assigns from further use of the streets of said city under said franchise, and said grantee and his or its successors or assigns shall thereupon and immediately surrender all rights in and to the same, and said franchise shall become and remain null, void and of no effect.

Sec. 3. The City Clerk shall certify to the passage of this ordinance by a unanimous vote and cause the same to be published once in The Los Angeles Daily Journal.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles by the unanimous vote of all the members of said Council present, there being

not less than twelve members present, at its meeting of December 2, 1927.

Robt. Dominguez, City Clerk.

Approved this 7th day of December, 1927.

George E. Cryer, Mayor.

12-21. 1t.

[fol. 422] EXHIBIT "F"

Min. Bk. 9, Page 206, Co., Class E

Whereas, by a petition of Charles H. Howland of Los Angeles City, Los Angeles County, California, it appears that said Chas. H. Howland desires to establish a railroad as hereinafter described, and whereas, it appears that such railroad will greatly benefit hte public and said property owners as well, and that the establishment of said road is consistent with the use of such highways as said railroad will run upon, as public highways;

Now therefore, be it resolved by the said Board of Supervisors of Los Angeles County That said Board of Supervisors hereby consent that the said Charles H. Howland his heirs, executors, administrators and assigns may construct, lay down, maintain and operate one single line of iron railroad tracks and run cars thereon moved by horse, mule, electricity, or cable power, and carry passengers thereon for the period of fifty years from the date of passage hereof along the following public highway or road, to-wit:

Commencing at the junction of Pico Street with the west line of the city of Los Angeles, County of Los Angeles, California, and running westerly along said Pico Street for the distance of one mile and a half, with the right to construct necessary turnouts, switches, curves and side tracks, it being understood that throughout its entire description, a line about four feet from the center of the street or road, or a line as near thereto as possible is intended.

Provided and upon condition that the consideration that the construction of said road shall be commenced within the period of three months from the date of passage hereof, and shall be finally completed, equipped, stocked and in

running order over a distance of at least one mile within the period of twelve months from the date of passage hereof, and that the further construction of the remainder of said railroad over the balance of said line shall be com- [fol. 423] menced within twelve months from the date of the passage hereof and shall be finally completed, equipped, stocked and in running order over the additional line of said road within the period of two years from the date of the passage hereof. It being understood that this privilege shall be forfeited by the grantee herein on account of a failure to complete the said road, which at the expiration of the said twelve and twenty four months shall remain and be unfinished, leaving the franchise to that portion of said road completed and in running order unaffected by such failure.

Provided further that said builder or builders of said road shall grade or macadamize or otherwise improve the entire length of said route, along which said road may be constructed between the rails and for two feet on each side thereof, so as to form a roadbed as good as the remainder of the road beyond the rails, whenever ordered to do so by said Board of Supervisors, and shall keep the same constantly in repair flush with the street and provided with good crossings, and wherever roads shall be made to cross said railroad, and provided that the tracks shall not be more than five feet wide within the rails and there be a space between the main track and side tracks or turnouts to allow cars to pass each other freely and without danger. Provided further, that the laying of said track shall in all cases conform where any part of said road has been or shall be graded to an established grade, to such established grade, and whenever any such established grade shall be changed or altered, the bed of the roads, and the tracks shall be made to conform therewith. Provided further, that said builder of said road shall provide said railroad with all necessary and proper flumes and culverts for the passage of water under said tracks from lands higher than said track or roadbed whenever or wherever said Board of Supervisors or its successors shall order said flumes or culverts to be placed. Provided further, that the County [fol. 424] reserves the right to grade, sewer, macadamize, pave, improve, alter or repair all or either of said high-

ways or any part thereof, and to pipe the same for gas or water or other purposes, such work to be done with as little injury as possible to said railroad. But when work shall make it necessary, the owner of said railroad must shift the rails so as to avoid the obstructions made thereby.

Provided further, that the rate of fare for passengers on said railroad shall never exceed ten cents.

The said Board of Supervisors reserving the right to establish a fare not exceeding ten cents or less than five cents. The rights and privileges given by these Resolutions are granted on each and all of the above conditions and provisions, and if the said grantee, his heirs or assigns shall fail to comply therewith or any part thereof, all of said rights and privileges shall be forfeited and shall be void.

EXHIBIT "G"

Min. Bk. 9, Page 489, Class F

Whereas, Emil R. d'Artois and his associates desire to build, construct and establish a railroad, as hereinafter described, and

Whereas, it appears by the signatures of numerous persons that the owners of a large amount of property along the line of the proposed railroad desire the same to be built, and

Whereas, it appears that such railroad will greatly benefit the public, and said property owners, as well and that the establishment of such railroad is consistent with the use of such highway.

Now, therefore, be it resolved by the Board of Supervisors of the County of Los Angeles, State of California, that said Board consents that Emil R. d'Artois or his assigns, may construct, lay down, maintain and operate a line of single track of iron or steel railroad with the right to change to double track at any time during the life of this [fol. 425] franchise, and to run cars thereon, moved by steam, cable, or electric power, and carry freight and passengers thereon for the period of fifty years from the date of passage hereof along the following public highways or streets, to-wit:

Commencing at a point at or near the present terminus of the Main St. and Agricultural Park R. R. Co's track at Agricultural Park, running thence westerly along the Central line of San Bernardino Street to Vermont Avenue, thence southerly along the center line of Vermont Avenue to a point at or near the northeast corner of the southeast quarter of Section 12, Township 3 S. Range 14 W. S. B. M., thence southwesterly along lands owned by said d'Artois to Ballona Avenue, thence westerly along the centre line of Ballona Avenue, to the Ocean Beach, with the right to construct necessary switches, curves, turnouts and side tracks.

Provided and on condition that the construction of said road shall be commenced within ninety days from the date of the passage hereof, and shall be completed, equipped, stocked and in running order over the line of said road from the initial point herein named to Ballona Avenue, within two years, and to the Ocean Beach within four years from and after the date of the passage hereof, it being understood that this privilege shall be forfeited by the grantee herein named on account of a failure to complete the said road, which at the expiration of four years shall remain and be unfinished, leaving the privilege to that portion of said road completed and in running order unaffected by such failure.

Provided further, that the said grantee or his assigns, shall grade or macadamize, or otherwise improve the entire length of said route, along which said road may be constructed, between the rails and for two feet on each side thereof, so as to form a roadbed as good as the remainder of the road beyond the rails whenever ordered by the said Board of Supervisors, and shall keep the same constantly [fol. 426] in repair, flush with the street and provided with good crossings, both at present crossings and wherever roads shall be made to cross said railroad, and provided that the tracks shall not be more than five (5) feet wide within the rails and there be a space between the main track and the side tracks, or turnouts, to allow cars to pass each other freely and without danger.

Provided further, that the laying of said track, shall in all cases conform when any part of said road has been, or shall be graded to an established grade, and whenever any such established grade shall be changed or altered, the bed

of the road and the track shall be made to conform therewith.

Provided further, that the said grantee, or his assigns, shall provide said railroad with all the proper and necessary flumes and culverts for the passage of water under said tracks or roadbed, whenever and wherever said Board of Supervisors or its successors, shall order said flumes or culverts to be placed:

Provided further, that the County reserves the right to grade, sewer, macadamize, pave, improve, alter or repair all or either of said highways, or any part thereof, and to pipe the same for gas, water or other purposes, such work to be done with as little injury as possible to said railroad, but, when work shall make it necessary the owner of said road must shift the rails so as to avoid the obstructions made thereby.

Provided further, that the rate of fare for passengers on said railroad shall never exceed three cents per mile.

The rights and privileges given by this resolution are granted on each and all of the above conditions and provisions, and if the said grantee, or his assigns, shall fail to comply therewith, or any part thereof, all of said rights and privileges shall be forfeited and shall be void, except as herein provided.

[fol. 427] EXHIBIT "H"

Ordinance No. 173, N. S. (County)

Class D

An ordinance granting to H. E. Huntington and his assigns a franchise for an electric street railway upon portions of Hoover Street, Clinton Street, Woodward Avenue, Santa Monica Avenue, Avery Avenue, and Benefit Street, in the County of Los Angeles

The Board of Supervisors of the County of Los Angeles do ordain as follows:

Section 1. The right, privilege and franchise is hereby granted to H. E. Huntington and his assigns, to construct, and for a period of forty years to operate and maintain

an electric street railroad, with a single or double track, at the option of the grantee, over the route and in and upon the streets or portions of streets in said county described as follows, to-wit:

Commencing at the intersection of Temple Street and Hoover Street; thence northerly on Hoover Street to Clinton Street; thence west on Clinton Street to Woodward Avenue; thence north on Woodward Avenue to Santa Monica Avenue, formerly burdick Street; thence northeasterly across Santa Monica Avenue to Avery Avenue; thence northerly on Avery Avenue to Benefit Street; thence westerly on Benefit Street to Edgemont Avenue.

Together with the right to construct and maintain all necessary turnouts, curves, connections with street intersections, such switches as may be approved by the Board of Supervisors of the County of Los Angeles, and all other appliances, proper constructions and attachments as may be necessary for the purpose of operating said road.

Section 2. That said franchise is granted and shall be held and enjoyed by said grantee or his assigns upon and subject to all the terms and conditions contained in this ordinance, and said grantee or his assigns shall file a written acceptance of said terms and conditions with the Clerk [fol. 428] of said Board of Supervisors within thirty days after the passage of this ordinance.

Section 3. That the railroad to be constructed and operated under this franchise shall be used for the transportation of passengers, baggage, United States mail, express matter and such commodities as can be conveniently handled by an electric railroad; also for material to be used in the construction and maintenance of railroads, streets and highways; provided that cars other than closed ones of a neat and attractive design shall only be conveyed over said road between the hours of 10:00 p. m. of each day and 6:00 a. m., of the following day.

Section 4. That no wire shall be hung on any street lower than twenty (20) feet from the ground and that the poles shall be placed on the extreme edge of said streets, unless otherwise directed by the road commissioner; and that the said grantee or assigns shall grade any highway over which the said railroad shall be built so as to leave the same

in at least as good condition as the same was before the construction of said railroad.

Section 5. That the tracks to be laid under said franchise shall not exceed four feet and eight and one half inches in width between the rails, and shall be placed as nearly equidistant from the center of the street as possible, and as near each other as a proper regard for safety will allow.

Section 6. That said grantee and his or its successors and assigns shall use in the construction of said road the best material, including a rail weighing not less than sixty (60) pounds per yard, such as is used on first class street railroads, which rail shall be satisfactory to the road commissioner of the district, or his successors in authority; and said rails shall be so laid as to be continuously welded or otherwise securely fastened together; and the said grantee and his or its successors or assigns shall at his, its [fol. 429] or their own expense and cost, pave or macadamize, oil, sprinkle, gravel or otherwise improve the said road between the rails, between the tracks, and for two (2) feet on each side thereof, with the same material used by the county and under the same specifications and in the same manner as upon the streets over which said road runs respectively, and shall keep the same constantly so paved and macadamized, oiled, sprinkled, graveled or otherwise improved and in repair, flush with the street and provided with suitable crossings, and shall make the roadbed conform at all times to the established grade of the street, provided, however, that where any of the above named streets have been graded or otherwise improved prior to the granting of said franchise, said roadbed and rails shall conform to and be flush with the surface of said graded or otherwise improved street or streets, whether such surface be above or below the official grade of such street or streets; and on all other street or streets, said roadbed and rails shall conform to such official grade as aforesaid; and provided further, that upon any regrading or other improving of said street or streets, said roadbed and rails shall be said grantee, or his or its successors or assigns, be placed upon and made to conform to said official grade. All repairs and grades to be made under the instructions

and to the satisfaction of the said road commissioner or his successor in authority. In case the said grantee or his or its successors or assigns fails to comply with the instructions given by said official for ten (10) days after service thereof upon said grantee or his or its successors or assigns, or upon the manager or agent of said grantee or his or its successors or assigns, in Los Angeles, he the said official, shall enter upon the road of said grantee or his or its successors or assigns, and do the work as ordered by the Board of Supervisors of the County of Los Angeles, said officer to keep an itemized account of the cost [fol. 430] of said work, which the said grantee and his or its successors or assigns, by the acceptance of said franchise, agrees to pay immediately upon its being presented to said grantee or his or its successors or assigns, or to such manager or agent stationed in Los Angeles; provided that said last remedy shall not operate as a waiver of the forfeiture of this franchise if said roadbed and tracks are not kept in repair as hereinbefore provided.

Section 7. That cars shall be run over the road constructed under this franchise, each way during every day at intervals of not more than one hour, from six o'clock a. m., to ten o'clock p. m., unless prevented by the elements, riots, strikes, or unavoidable causes; and that cars shall be operated over said road as much oftener as may be necessary to provide ample facilities for all persons applying for transportation thereover; and that cars shall be operated with sufficient frequency to accommodate all persons who may apply for transportation over said road, excepting at times of extraordinary amounts of travel that could not reasonably have been foreseen.

Section 8. That said grantee or assigns shall construct all necessary flumes and culverts for the free passage of water under the tracks and across the streets or highways where the same naturally flows, and that all curves, aqueducts, turnouts and switches shall be constructed under plans and specifications approved by the Board of Supervisors. And it is understood that said grantee shall have the right to excavate and remove portions of the street necessary to properly construct said work and to erect temporarily all needful apparatus to properly build said road.

Section 9. It is understood further, that the Board of Supervisors in making the grant of said franchise, ex- [fol. 431] pressly reserves the right to pave, macadamize, renew and sewer any of said streets, or to lay water, gas or other pipes therein, such work to be done so as to injure said road as little as possible.

Section 10. That no cars shall be operated along said tracks at night without the use of a headlight, and all cars operated along said track shall be provided with a bell or gong to be rung at a distance of not less than one hundred and fifty (150) feet from the place where said road crosses any intersecting streets and to continue ringing until the car passes said streets.

Section 11. That persons under eighteen (18) years of age, who attend the public schools, shall be required to pay but one half the fare charged other persons, provided such persons shall purchase their tickets in quantities of at least two dollars' worth at a time, such tickets to be available only between the hours of seven o'clock a. m., and six o'clock p. m., in actual passage to and from school. Said grantee or assigns shall sell such tickets whenever requested to do so by a pupil who shall present a certificate from his or her teacher that he or she is attending said schools.

Section 12. That the rate of fares charged shall not exceed two and one half cents per mile for any distance; provided, however, that no fare shall be less than five cents.

Section 13. That the the grantee and his or its successors and assigns shall during the life of said franchise pay to the County of Los Angeles, in lawful money of the United States, two per cent of the gross annual receipts of such grantee and his or its successors and assigns arising from the use, operation or possession of said franchise. No percentage shall be paid for the first five years succeeding the date of said franchise, but thereafter such percentage shall be payable annually, and said franchise is to be forfeited by failure to make the payments provided for. Provided, [fol. 432] that if the road for which said franchise is

granted shall be an extension of an existing system of street railroad, then the gross receipts shall be estimated to be one half of the proportion of the total gross receipts of said system which the mileage of such extension bears to the total mileage of the whole system, and said estimate shall be conclusive as to the amount of the gross receipts of said extension.

Section 14. And it shall be the duty of the grantee of said franchise, and his or its successors and assigns, to file with the clerk of said Board of Supervisors, at the expiration of six years from the date of the granting of said franchise, and at the expiration of each and every year thereafter, a statement, verified by the oath of said grantee, or his or its successors or assigns, or by the oath of the manager or presiding officers of such grantee or his or its successors and asigns, showing the total gross receipts and gross earnings collected or received by said grantee or his or its successors or assigns during the preceding twelve months, from all traffic over any part of the line for the construction and operation of which said franchise is granted, or over any part of the system of street railroad of which it may be an extension, and from all other sources; and within ten days after the time for filing the aforesaid statement, it shall be the duty of said grantee and his or its successors and assigns to pay to the County Treasurer of said county the aggregate sum of said percentage upon the amount of the gross annual receipts arising from the use, operation or possession of said franchise, determined and computed in the manner hereinbefore provided, and any neglect, omission or refusal by said grantee or his, or its successors or assigns to file said verified statement, or to pay the said percentage of the said gross annual receipts at the times or in the manner hereinbefore provided, shall [fol. 433] ipso facto work a forfeiture of said franchise and of all rights thereunder, to the County of Los Angeles.

Section 15. That the work of constructing said road shall be commenced in good faith within not more than four months from the date of the granting of said franchise and shall be continuously prosecuted thereafter in good faith and without unnecessary or avoidable intermission or delay; that said work of construction shall be completed

within not more than three years thereafter; that said work of construction shall be commenced and continuously prosecuted so that at least one third of the work of constructing said road shall be completed within one year from the time of commencement, and that if said work be not so commenced, prosecuted or completed within the times or in the manner specified, said franchise shall be forfeited.

[fol. 434] Section 16. That said grantee, or his or its successors, shall not sell, transfer or assign said franchise or any of the rights or privileges granted thereby, except by a duly executed instrument in writing filed in the office of the Clerk of the Board of Supervisors; and nothing in said franchise contained shall be construed to grant to said grantee or his or its successors or assigns any right to sell, transfer or assign said franchise or any of the rights or privileges thereby granted, except in the manner aforesaid.

Section 17. That whenever any portion of the territory covered by this franchise shall be included within any municipal corporation the right reserved under this franchise to the county of Los Angeles, or to any officer thereof, except the right to collect and receive a percentage of the gross receipts and to require a statement thereof, shall inure to the benefit of such municipal corporation and its appropriate officers.

Section 18. That any neglect, failure or refusal to comply with any of the conditions of said franchise shall thereupon immediately ipso facto effect a forfeiture thereof, and the said Board of Supervisors may thereupon declare said franchise forfeited, and may exclude said grantee, or his or its successors and assigns, from further use of the streets under said franchise; and said grantee and his or its successors and assigns shall thereupon and immediately surrender all rights in and to the same, and said franchise shall be deemed and shall remain, null, void and of no effect.

Section 19. This ordinance shall take effect on the 5th day of May, 1907, and prior to the expiration of fifteen days from the passage hereof shall be published for at least one week in the Los Angeles Daily Journal, a newspaper printed and published in the county of Los Angeles, State [fol. 435] of California, together with the names of the

members of the Board of Supervisors voting for and against the same.

C. E. Patterson, Chairman of the Board of Supervisors of Los Angeles County, State of California.

Attest: C. G. Keyes, County Clerk and ex-Officio Clerk of the Board of Supervisors of Los Angeles County, by A. M. McPherron, Deputy Clerk.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, C. G. Keyes, County Clerk of the County of Los Angeles, State of California, and ex-officio clerk of the Board of Supervisors thereof, do hereby certify that at a regular meeting of the Board of Supervisors of said Los Angeles county, held on the 16th day of April, 1907, at which meeting there were present, Supervisors C. E. Patterson (Chairman presiding), C. D. Manning, S. T. Eldridge and P. J. Wilson (absent Supervisor Geo. Alexander), and the Clerk, the foregoing ordinance, consisting of 19 sections, was considered section by section and each section separately adopted, and that the said ordinance was then passed and adopted as a whole by the following vote, to-wit: Ayes, Supervisors Manning, Eldridge, Wilson and Patterson; Noes, none.

In witness whereof I have hereunto set my hand and affixed the seal of the Board of Supervisors of said Los Angeles County, this 16th day of April, 1907.

C. G. Keyes, County Clerk for Los Angeles County and ex-Officio Clerk of the Board of Supervisors of said County, by A. M. McPherron, Deputy Clerk. (Seal.)

(Endorsed:) Filed Jul. 20, 1928. R. S. Zimmerman, Clerk, by —— ——, Deputy Clerk.

[fol. 436] IN UNITED STATES DISTRICT COURT

COUNTER AFFIDAVIT OF H. G. WEEKS FOR PLAINTIFF

(In part in narrative form)

Affiant is and for five years past has been assistant to the General Manager of plaintiff, and has general super-

vision over plaintiff's motor bus operations and plaintiff's rates of fare; prior thereto he was for ten years Assistant Engineer and later Transportation Engineer of defendant Railroad Commission. He is familiar with the regulation and operation of street railways including motor buses and particularly with plaintiff's properties and fares. Plaintiff operates motor bus lines for the carriage of passengers only, some solely on its own account and some jointly with the Pacific Electric Railway Company under the name of Los Angeles Motor Coach Company.

The number of such bus lines, segregated as to operation, and the fares thereon, included in Application No. 13323, before the Railroad Commission of the State of California, together with the rates of one-zone fares proposed in said application, are as follows, to-wit:

Operated by Los Angeles Railway Corporation

14 motor bus lines with 5¢ fare, proposed to be increased to 7¢ cash or 6¼¢ by token.

2 motor bus lines with 10¢ fare, not proposed to be increased.

Operated by Los Angeles Motor Coach Company

2 motor bus lines with 10¢ fare, no increase proposed.

3 motor bus lines with 6¢ and 10¢ fares, no increase proposed. (6¢ fare is without transfer privilege.)

The number of motor bus lines, with fares thereon, included in said Application No. 13323 at the time of submission thereof in August, 1927, segregated as to operation, and the proposed rates of one-zone fare thereon, are as follows, to-wit:

Operated by Los Angeles Railway Corporation

15 motor bus lines with 5¢ fare, proposed to be increased to 7¢ cash or 6¼¢ by token.

3 motor bus lines with 10¢ fare, not proposed to be increased.

[fol. 437] Operated by Los Angeles Motor Coach Company

2 motor bus lines with 10¢ fare, no increase proposed.

3 motor bus lines with 6¢ and 10¢ fares, no increase proposed. (6¢ fare is without transfer privilege.)

Similar information as of May 31, 1928, is as follows, to-wit:

Operated by Los Angeles Railway Corporation

15 motor bus lines with 5¢ fare, proposed to be increased to 7¢ cash or 6¼¢ by token.

2 motor bus lines with 10¢ fare, not proposed to be increased.

Operated by Los Angeles Motor Coach Company

3 motor bus lines with 10¢ fare, no increase proposed.

4 motor bus lines with 6¢ and 10¢ fares, no increase proposed. (6¢ fare is without transfer privilege.)

Affiant prepared all the proposed tariffs or schedules of fare filed in Application No. 13323 before the Railroad Commission and the proposed tariff filed in this action, and the increases in fares on motor bus lines as sought in this action are the same as sought in Application No. 13323, and the proposed tariff or schedule of fares is just the same in this action as in Application No. 13323, except the tariff is somewhat modified in form, and it is necessarily somewhat different as to the extent of the territory covered, as motor bus lines have been added, extended or discontinued in the interim, and there are not discriminations in either of said proposed tariffs.

The increase in fare sought on plaintiff's motor bus lines where the present fare is 5¢ is the same increase sought on plaintiff's rail operations where the present fare is 5¢, both in said Application No. 13323 and in this action.

All valuations, appraisals, statements of operating revenues, operating expenses, taxes, etc., placed in evidence before the Railroad Commission by plaintiff, by the Railroad Commission's Engineers and the Engineers for the City of Los Angeles, and as shown by the Railroad Com-
[fol. 438] mission in its consideration of a rate base, the finding of net income available for return, operating revenues, operating expenses and taxes, include all the plaintiff's motor bus lines (including plaintiff's share of motor bus lines operated by Los Angeles Motor Coach Company),

except those lines added, extended or discontinued since the date of submission of Application No. 13323 in August, 1927.

The Los Angeles Motor Coach Company is not a corporation and owns no property, being an operating agency created by plaintiff, and Pacific Electric Railway Company, to operate motor buses under the approval of the Railroad Commission in its Decision No. 12,826, November 14th, 1923. It has been in existence part of the time under the name of the Los Angeles Motor Bus Company since August 15th, 1923. The agreement dated August 15th, 1923, between plaintiff and Pacific Electric Railway Company, under and by virtue of which this agency was created, provides that each of them shall provide one-half of the property, or the cost thereof, used, or that each of them shall share equally in the revenues and expenses and in the control thereof. One-half of the property, or the cost thereof, used by the Los Angeles Motor Coach Company, and one-half of its revenues and expenses, are included in the books of accounts of plaintiff just like property and the revenues and expenses of plaintiff's car lines and plaintiff's solely owned and operated motor bus lines, and said one-half has been so included in all of plaintiff's statements and exhibits dealing with the whole of plaintiff's operative property and operations both before the Railroad Commission in Application No. 13323 and in this action.

No increase in fares on bus lines of the Los Angeles Motor Coach Company was requested in Application No. 13,323 and no change in its rates is requested in this action, as application for such change in rates would have to be made jointly by plaintiff and Pacific Electric Railway Company.

[fol. 438-a1] EXCERPTS FROM COMPANY'S EXHIBIT No. 20

Memorandum on Investment, Valuation, Depreciation, Rate Base, and Fair Return by Richard Sachse, January, 1927

The rate of fair return is determined by the cost of capital to the utility and by the degree of risk inherent in the business. It is clear that a fair rate of return must be

higher than the actual cost of money in order to avoid confiscation of capital and of property.

Detailed studies of cost of money to various public utilities in California, including electric railways, have been made in connection with a number of rate and other proceedings before the Commission. In the Key System rate case such a detailed study showed that the cost of money for street railways in California and elsewhere in the United States is now and has been for the last ten years in the neighborhood of seven per cent.

The credit of the Los Angeles Railway under its present control and ownership is perhaps higher than the average large street railway system, and this is reflected in the cost of money to this company. It is a fact, however, that making allowance for this factor the cost of money to the company does not fall below 6½ per cent.

Eight per cent (8%) should, in my opinion, be taken as the fair rate of return in this proceeding for the following principal reasons:

"(1) Assuming that economic conditions permit the utility to charge rates enabling it to earn a fair return, then the rate of such return must be above the line of confiscation as contemplated by the courts. The line of confiscation is reached when the rate of return falls below the rate of the cost of money (in this case assumed as 6½%);

"(2) Based on (1) above, the rate of return should exceed the cost of money by a reasonable percentage to allow for the risk attaching to the business and to permit, if possible, of a reasonable profit. In this case I believe that a differential of 1½% is a minimum, and if in the opinion [fol. 438-a2] of the Commission this assumption is sound, a fair rate of return would amount to 8% on the rate base estimated above;

"(3) An 8% rate of return for public utilities has been held reasonable and fair, for the utilities and the public alike, in many rate cases by the California Railroad Commission, and similarly by other commissions on the Pacific coast and elsewhere in the United States. In some cases, notably certain street railway cases, commissions have fixed rates that did not net the companies an 8% return, but in such instances it was pointed out that by reason of com-

petitive conditions, or because there would result a rate unjust to the public, or because the economic maximum cost of the service was reached, or for the other controlling reasons, the normal fair rate of return could not be granted.

"It is clear that the 'economic limit' of the rate of fare will not be reached if a rate of return is fixed that will allow this company an 8% return on the estimated rate base.

"(4) If a rate of return less than 8% is fixed it will be difficult, if not impossible, for the company to finance future necessary improvements and extensions. In any event, the company would be bound to follow a policy of caution and retrenchment wherever possible, and this will have a deteriorating effect on the service, and, in my opinion, be against the best interests of the City of Los Angeles, and the car riders."

It is, of course, impracticable to fix rates that will produce exactly a given percentage of return. With an eight per cent (8%) rate, the total return that the company would be entitled to earn on the rate base as shown above would be as follows:

(a) Rate base, $45,000,000 (straight-line depreciation) 8% = $3,600,000.

(b) Rate base, $50,000,000 (sinking fund depreciation) 8% = $4,000,000.

[fol. 438-a3] EXHIBIT #21

Los Angeles Railway Corporation

Estimates of Results from Operations for the year 1927, Assuming Present Conditions

Rail Operations:

Railway Operation Revenues:

Revenue from Transportation	12,000,000
Other revenue	125,000
Total Operating Revenue	12,125,000

EXHIBIT #21—Continued

Railway Operating Expenses:			
Way and Structures	767,650		
Equipment	1,197,200		
Power	1,050,000		
Conducting Transportatioon	4,541,500		
Traffic	29,500		
General & Miscellaneous	913,500		
Total	8,499,350		
Depreciation	1,295,000		
Total Operating Expenses (Rail)		9,794,350	
Net Operating Revenue		2,320,650	
Taxes		740,000	
Operating Income (Rail)			$1,580,650

A. S., Jan. 5, 1927.

Bus Operations:			
Los Angeles Railway:			
Operating Revenue	760,000		
Operating Expenses	993,000		
Net Loss before Taxes	233,000		
Taxes	44,000		
Operatin Loss (L. A. Railway Bus)		277,000	
Los Angeles Motor Bus Company:			
Operating Revenue	740,000		
Operating Expenses	770,000		
Net Loss Before Taxes	30,000		
Taxes	48,000		
Operating Loss	78,000		
Los Angeles Railway Company:			
Proportion (approximately 50%)		39,000	
Total Loss Bus Operations			316,000
Estimated operating income for 1927 (Rail and Bus)			$1,264,650

R. S., Jan. 5, 1927.

[fol.438-a4] EXHIBIT #22

Los Angeles Railway Corporation

Estimate of Operating Results for the Year 1927 under Proposed Rates, Estimating 90% of Revenue Passengers Will Use Tokens and a Curtailment of Traffic of 5%

Rail Operations:	
Railway Operating Revenue:	
Revenue from Transportation	$14,353,597
Other Revenue	125,000
Total Operating Revenue	14,478,597
Railway Operating Expenses	10,203,040*
Net Operating Revenue	4,275,557
Taxes (Based on 1926 Revenue)	740,000
Operating Income (Rail)	3,535,557
Bus Operations:	
Net Loss from Bus Operations (L. A. Rwy. & L. A. M. B.)	300,000
Operating Income Rail and Bus	3,235,557
8% Return on $45,000,000	3,600,000
Return falling short by	364,443

In case of curtailment of traffic of 7½% return will fall short by 742,169.

$3,235,557 is equal to 7.2% on Rate Base of $45,000,000.

Operating Expenses per exhibit #21	$8,499,350
Depreciation	7,703,690
Total operating expenses and depreciation	10,203,040

R. S., Jan., 1927.

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*Including straight line depreciation on $32,066,445 depreciable property (H. R. C.) as of 12-31-26 and amounting to $1,703,690 based on lives agreed upon by engineers of Commission, City and Company:

[fol. 438-a5] EXHIBIT #23

Los Angeles Railway Corporation

Estimates of Revenue from Increased Rates under Various Conditions

RAIL FARES

Approximate traffic	Class of	Rate Present	Rate Proposed	Prospective Revenue
2,540,000	Outer Zones	$.10	$.10	$254,000
20,000	" "	.15	.15	3,000
32,000	" " (round trip)	.25	.30	9,600
385,000	Eagle Rock Tickets	.05	.10	38,500
684,000	Inglewoood "	.05	.10	68,400
208,000	Lennox "	.075	.15	31,200
44,000	Hawthorne "	.10	.15	6,600
280,000	Vermont Heights "	.05	.10	28,000
270,000	Homeward Ave. "	.05	.10	27,000
	Total Outer Zone Fares	...	...	$466,300
40,000	Government	.05	.0625	2,500
2,650,000	School Fares	.025	.035	92,750
	Total except Inner Zone			$561,550

CASH FARES

Inner Zone Regular Fares

230,000,000, Cash Fares .05 .0625 or .07.

Cash Fares % of Total	Number	Token Fares % of Total	Number	Amount Cash	Tokens	
5%	11,500,000	95%	218,500,000	805,000	13,656,250	14,461,250
	Total					15,022,800
10%	23,000,000	90%	207,000,000	1,610,000	12,037,500	14,547,500
	Total					15,109,050
15%	34,500,000	85%	195,500,000	2,415,000	12,218,750	14,633,750
	Total					15,195,300

CURTAILMENT

	5% cash 95% token	10% cash 90% token	15% cash 85% token
Total Revenue	15,022,800	$15,109,050	$15,195,300
5% Curtailment	14,271,660	14,353,597	14,435,535
10% Curtailment	13,520,520	13,598,145	13,675,770

Bus Division Fares

3,750,000, 10¢ lines, .10, .10		$375,000
2,650,000, 5¢ with transfer, .05 10%, .07 90%	.0625	18,550
3,569,000, 5¢ no transfer, .05, .05		149,062
..... New Lines		65,000
		786,062

Estimate Curtailment on 7¢, 6¼¢ Fares, 5%= $8,380.
10%=$16,761.

R.S.,BWC, Jan. 1927.

[fol. 439] EXHIBIT No. 35

Application 13323

Exhibit #7

Los Angeles Railway Corporation

Application 13323

Statement of Revenue and Expenses for the Year 1926

	Estimate per Original Exhibit #7	Actual	Total over estimate (increase black) (decrease red)
Rail Operations:			
Railway Operating Revenue			
Revenue from Transportation	$11,991,456	$11,992,346	$890
Other Revenue	125,974	126,113	139
Total	12,117,430	12,118,459	1,029
Railway Operating Expenses:			
Operating Expense	8,492,349	8,530,274	37,925
Depreciation	1,282,349	1,282,350	1
Total	9,774,698	9,812,624	37,926
Net Operating Revenue	2,342,732	2,305,835	36,897*
Taxes	745,000	763,829	18,829
Operating Income—(Rail)	1,597,732	1,542,006	55,726*
Bus Operations:			
Los Angeles Railways:			
Operating Revenue	567,034	565,152	1,882*
Operating Expenses	751,012	752,859	1,847
Net Loss before Taxes	183,978	187,707	3,729
Taxes	24,394	24,447	53
Operating Loss	208,372	212,154	3,782

[*Red in copy.]

EXHIBIT No. 35—Continued

Los Angeles Motor Bus Company:			
Operating Revenue	673,697	675,921	2,224
Operating Expenses	726,434	731,335	4,901
Net Loss before Taxes	52,737	55,414	2,677
Taxes	19,663	39,307	19,644
Operating Loss	72,400	94,721	22,321
Los Angeles Railway Corp. proportion (approximately 50%)	36,200	48,254	12,054
Total Loss Bus Operations	244,572	260,408	15,836
Operating Income—Rail and Bus 1926	$1,353,160	$1,281,598	$71,562*

R.S., April, 1927.

[fol. 440] EXHIBIT #45-A

Supplemental Application No. 13323

Los Angeles Railway Corporation

Statement "F"

Estimate of Results from Operations for the year 1927 under Present Fares

Rail Operations:

Railway Operating Revenue:		
Revenue from Transportation		12,000,000
Other Revenue		125,000
Total Operating Revenue		12,125,000
Railway Operating Expenses:		
Way and Structures	950,000	
Equipment	1,197,200	
Power	1,050,000	
Conducting Transportation	4,541,500	
Traffic	29,500	
General and Miscellaneous	913,500	
Total	8,681,700	
Depreciation	1,417,217†	
Total Operating Expenses (Rail)		10,098,917
Net Operating Revenue		2,026,083
Taxes		740,000
Operating Income (Rail)		1,286,083

[*Red in copy.]

†Straight-line depreciation based on valuation, historical reproduction cost.

EXHIBIT #45-A—Continued

Bus Operations:			
Los Angeles Railway:			
Operating Revenue	760,000		
Operating Expenses	993,000		
Net Loss before Taxes	233,000		
Taxes	44,000		
Operating Loss (L. A. Ry. Bus)		277,000	
Los Angeles Motor Bus Company:			
Operating Revenue	740,000		
Operating Expenses	770,000		
Net Loss before Taxes	30,000		
Taxes	48,000		
Operating Loss	78,000		
Los Angeles Railway Company's proportion (approximately 50%)		39,000	
Total Loss from Bus Operations			316,000
Estimated Operating Income for 1927 (Rail and Bus) (Equivalent to 8% return on $12,126,037)			970,083

R. S., May, 1927.

[fol. 441]

EXHIBIT No. 48

Application No. 13323

LOS ANGELES RAILWAY—BUS DIVISION

Revenues and Expenses and Traffic Statistics by Bus Line—1923 to 1926, Inclusive

Line		Revenue	Expenses	Miles	Revenue per bus mile (cents)	Expenses per bus mile (cents)	Total passengers	Free and transfer passengers	Miles per 18 hr. busses
Alvarado St.	1925	$1,852	$3,426	17,268.28	10.7234	19.84	53,978	17,329	148.85
	6	32,237	39,631	172,680.77	18.6685	22.95	993,250	357,772	150.27
Beverly Blvd.	1923	2,583	6,836	34,662.09	7.4514	19.72	83,465	32,238	151.26
	4	18,464	38,008	174,088.27	10.6062	21.83	62,728	244,347	168.45
	5	15,303	26,761	122,460.22	12.4966	21.85	521,642	200,712	157.03
	6	15,117	34,485	150,530.93	10.0424	22.91	464,963	150,953	174.05
Eagle Rock.....	1925	249	1,967	11,347.31	2.1943	17.33	9,502	4,520	167.36
	6	2,264	9,172	44,655.41	5.0699	20.54	53,787	8,053	205.82
Figueroa St.....	1924	12,381	21,010	99,197.76	12.4810	21.18	140,601	16,317	191.08
	5	46,945	69,626	370,160.13	12.6822	18.81	518,808	49,042	203.96
	6	60,325	89,954	409,641.43	14.7263	21.96	675,087	71,416	208.83
Florence Ave.....	1924	101	86	504.78	20.0143	17.02	1,122	.....	213.88
	5	5,432	13,749	72,381.63	7.5056	18.90	111,580	3,421	190.55
	6	17,285	30,576	152,899.90	11.3048	20.00	353,534	7,810	210.33
Inglewood	1925	13,837	16,791	90,041.08	15.3675	18.65	279,448	2,704	195.23
	6	32,658	42,399	200,491.15	16.2890	21.15	663,792	10,601	192.54
Lincoln Park.....	1923	5,356	8,579	34,796.98	15.3912	24.65	217,005	109,521	117.53
	4	10,709	14,928	63,247.78	16.9317	23.60	443,677	228,333	118.91
	5	10,802	17,232	67,225.29	16.0674	25.63	451,381	232,554	128.31
	6	10,329	21,774	71,760.03	14.3938	30.34	425,373	215,600	137.71
Manchester	1926	7,212	19,125	105,274.09	6.8506	18.17	145,411	1,222	236.66
Melrose Ave.....	1924	6,086	10,070	52,548.00	11.5810	19.16	121,820	263	205.03

Line		Revenue	Expenses	Miles	Revenue per bus mile (cents)	Expenses per bus mile (cents)	Total passengers	Free and transfer passengers	Miles per 18 hr. busses
	5	34,489	36,095	191,877.62	17.9743	18.81	698,240	19,265	203.21
	6	70,092	67,338	307,573.94	22.7887	21.89	1,411,924	62,997	188.82
Normandie Ave.....	1925	2,420	3,422	16,325.79	14.8244	20.96	98,119	50,086	157.04
	6	14,180	21,768	86,898.61	16.3179	25.05	588,628	309,328	160.42
Santa Fe Ave.....	1924	495	1,928	10,268.38	4.8221	18.77	18,372	8,189	172.98
	5	3,256	9,809	51,607.58	6.3083	19.00	123,352	56,826	175.07
[fol. 442]	6	3,149	10,863	46,180.84	6.8188	23.52	121,315	58,466	168.22
San Pedro & So. Main	1923	15,242	28,901	138,704.23	10.9889	20.84	602,341	291,254	155.43
	4	22,699	35,132	139,159.99	16.3115	25.25	911,570	444,941	150.95
	5	29,397	41,758	199,379.46	14.7443	20.94	1,146,659	538,259	179.19
	6	39,764	81,504	348,817.02	11.3996	22.72	1,511,591	692,361	192.85
Washington Blvd...	1925	1,490	3,294	16,761.59	8.8890	19.65	29,927	121	188.14
	6	9,195	14,873	74,244.82	12.3847	20.03	185,099	1,188	178.84
Wilshire Blvd.....	1923	8,367	14,264	86,105.56	9.7171	16.56	100,261	10,723	198.00
	4	77,652	104,218	478,922.31	16.2138	21.76	995,415	159,426	210.08
	5	157,521	183,284	675,559.77	23.3170	27.13	1,863,959	163,165	205.07
	6	236,163	280,668	776,560.36	30.4114	36.14	2,794,652	266,542	203.75
York Blvd.....	1923	36	643	463.60	7.8408	13.89	727	....	101.67
	4	2,013	4,440	16,261.92	12.3785	27.30	97,311	54,105	107.38
	5	3,160	6,714	24,043.86	13.1418	27.92	169,692	99,653	112.02
	6	3,178	6,403	23,784.21	13.3617	26.92	171,521	101,393	111.95
Verdugo	1926	199	669	4,039.64	4.9262	16.55	4,055	77	199.19
School Lines.....	1924	375	276	1,464.80	25.6226	18.84	4,798	....	178.42
	5	2,442	1,631	8,679.22	28.1373	18.79	29,261	3	158.41
	6	6,641	5,144	23,375.37	28.4102	22.00	88,846	....	192.18
School Tickets.....	1923	201	.....	.....	.....	....	....	....	.....
	4	797	.....	.....	.....	....	....	....	.....
	5	1,086	.....	.....	.....	....	....	....	.....
	6	1,042	.....	.....	.....	....	....	....	.....
System	1926	.....	961	.....	.....	....	....	....	.....
Totals	1923	$31,785	$59,223	294,742.46	10.7844	20.09	1,003,799	443,736	158.71
	4	151,772	230,096	1,035,664.99	14.6545	22.22	3,361,966	1,155,921	179.68
	5	329,681	435,559	1,935,118.83	17.0367	22.51	6,105,539	1,437,660	188.87
	6	561,030	777,307	2,999,408.52	18.7047	25.92	10,652,828	2,316,779	190.26

[fol. 442-a1] PORTIONS OF PAGES 1, 5, AND 6 AND EXHIBIT D-1 ATTACHED TO EXHIBIT NO. 49 BY T. G. HUGHES, COMMISSION SPECIAL ACCOUNTANT

Los Angeles Railway Corporation

In connection with Application No. 13323 I have, with the assistance of Mr. Farren, made an examination of the books and records both of the Los Angeles Railway
1 Corporation and the City Railway Company, from December 1, 1913 (the date an appraisal of the properties was made by the engineering department of the Commission) to December 31, 1926, for the purpose of ascertaining:

(1) The amount shown by the books to have been expended on additions and betterments to the properties during that period.

(2) The profit earned from the operation of the property for the twelve years ending December 31, 1926.

* * * * * * *

Operation

In order that the commission may be informed as to the results from the operation of the property of the company over a reasonably long period, I have prepared and attach hereto (Exhibit D) a statement of the earn-
5 ings and expenses for the twelve years ending December 31, 1926. The first sheet of the exhibit shows the whole story; the earnings are given in detail, while the expenses are summarized under the main heads with a note of the sheet number on which the details are given. On the third line from the bottom will be found the profit for the year, available as a return on the amount invested. The figures on the next line show the amount invested each year, based on the 1913 appraisal plus subsequent net additions. The amount of additions included in any one year represents the total at the beginning of that year, plus one-half of the net amount expended during the year. In no case does the amount invested include anything in respect of materials and supplies and working capital.

[fol. 442-a3]

	1915	1916
Revenue:		
Passenger revenue	$6,014,229	$5,772,516
Special car revenue	12,697	7,249
Mail revenue	4,447	4,185
Express revenue	3,968	4,114
Miscellaneous transportation	254	92
Station and car privileges	42,259	39,703
Rent of tracks and terminals	1	1
Rent of equipment	3,195	4,456
Rent of buildings and other property	2,125	1,722
Power sold	50,002	26,260
Misc. revenue	1,838	1,535
	$6,135,215	$5,861,832
Expenses:		
Way & Structures. See D-2	538,515	337,866
Equipment. See D-3	279,020	335,173
Power. See D-3	720,242	703,579
Conducting Trans. See D-3	2,144,070	2,027,638
Traffic. See D-4	14,117	14,873
Gen. & Misc. See D-4	438,573	293,399
Taxes Local. See F	375,913	349,227
Taxes Federal	.....	.....
Motor bus loss	.....	.....
L. A. Motor bus loss	.....	.....
Total expense	$4,330,450	4,061,747
Profit before depreciation	1,804,765	1,800,085
Depreciation	245,518	234,553
Profit (subject to reasonableness of depreciation) available for return on investment	$1,559,247	$1,565,532
Investment on Basis of 1913 appraisal plus net additions but exclusive of materials and supplies and working capital	$23,317,669	$24,362,79[illegible]
Rate of return	6.70	6.4[illegible]

* Red.

Exhibit 49

Application No. 13323

Earnings and Expenses by Years from January 1, 1915, to December 31, 1926

Page Exhibit D-1

Los Angeles Railway Corporation

16	1917	1918	1919	1920	1921	1922	1923	1924	1925
,516	$6,088,777	$6,519,878	$7,283,137	$8,980,243	$10,065,715	$10,989,501	$12,451,050	$12,577,881	$12,087,51
,249	4,268	3,534	2,516	2,168	1,830	2,114	2,640	2,600	4,02
,185	3,850	4,218	4,958	1,649	703	1,001	1,466	1,692	4
,114	4,864	5,064	4,358	3,719	4,112	5,169	4,586	4,830	3,6
92	371	496	247	272	395	701	914	718	8
,703	39,808	41,295	37,905	39,393	41,397	40,635	44,131	52,554	51,2
1	1	1	51	1	1	21	2	22	
,450	127	.....	382	15	.....	1,315	2,473	2,819	1,9
,722	1,346	1,097	1,459	1,185	10,085	67,098	69,064	70,767	71,5
,260	1,436	355	5*	258	131	502	.....	.....	....
,535	688	1,700	1,540	3,359	5,524	10,817	8,903	5,567	3,3
,832	$6,145,736	$6,577,638	$7,336,550	$9,032,292	$10,129,893	$11,116,874	$12,585,225	$12,719,450	$12,224,5
,866	310,419	406,395	341,178	375,551	586,889	504,470	508,474	573,519	703,9
,173	387,991	533,624	590,696	636,383	755,271	521,493	566,746	901,265	1,173,5
,579	726,645	757,327	840,162	1,018,971	1,935,415	1,974,358	1,018,767	1,004,361	1,023,6
,635	2,213,871	2,784,719	3,232,713	3,701,748	4,029,619	5,807,035	4,446,799	4,721,785	4,621,3
,873	14,460	16,309	19,221	22,316	38,748	37,841	33,892	22,886	24,4
,398	408,144	491,349	555,569	768,902	870,956	801,008	1,188,550	1,003,998	948,5
,223	348,100	338,800	373,800	396,000	460,000	594,000	636,000	705,000	739,5
....	.....	.....	.....	.....	.....	216,000	194,000	150,000	46,0
....	.....	.....	.....	.....	.....	.....	27,438	76,866	103,1
....	.....	.....	.....	.....	.....	.....	7,054	25,795	30,8
,747	4,409,630	5,328,523	5,953,341	6,911,871	7,796,898	7,455,205	8,627,720	9,185,475	9,415,2
,085	1,736,106	1,249,115	1,383,209	2,120,421	2,332,995	3,663,669	3,957,505	3,533,975	2,809,3
,553	430,361	460,635	518,234	730,812	915,680	977,442	1,061,013	1,159,524	1,270,8
,532	$1,305,745	$788,480	$864,972	$1,389,609	$1,417,315	$2,686,227	$2,896,492	$2,374,451	$1,539,0
,780	$24,856,206	$25,153,046	$25,446,452	$26,055,498	$27,250,131	$29,447,357	$32,639,494	$36,500,983	$38,958,8
6.42	5.25	3.13	3.40	5.33	5.20	9.12	8.87	6.50	8.

15, to December 31, 1926

on

1921	1922	1923	1924	1925	1926
$10,065,715	$10,989,501	$12,451,050	$12,577,881	$12,087,519	$11,985,144
1,830	2,114	2,640	2,600	4,026	2,510
703	1,001	1,466	1,692	419	502
4,112	5,169	4,586	4,830	3,665	2,990
395	701	914	718	815	900
41,397	40,635	44,131	52,554	51,286	50,136
1	21	2	22	1	1
.....	1,315	2,473	2,819	1,978	1,642
10,085	67,098	69,064	70,767	71,543	68,727
131	502	.....	.....	.....	.....
5,524	10,817	8,903	5,567	3,325	5,606
$10,129,893	$11,116,874	$12,585,225	$12,719,450	$12,224,577	$12,118,458
586,889	504,470	508,474	573,519	703,976	826,549
755,271	521,493	566,746	901,265	1,173,515	1,197,327
1,935,415	1,974,358	1,018,767	1,004,361	1,023,673	1,050,724
4,029,619	5,807,035	4,446,799	4,721,785	4,621,301	4,537,712
38,748	37,841	33,892	22,886	24,422	25,801
870,956	801,008	1,188,550	1,003,998	948,565	689,219
460,000	594,000	636,000	705,000	739,546	726,725
.....	216,000	194,000	150,000	46,000	29,000
.....	.....	27,438	76,866	103,199	212,154
.....	.....	7,054	25,795	30,829	48,917
7,796,898	7,455,205	8,627,720	9,185,475	9,415,226	9,544,128
2,332,995	3,663,669	3,957,505	3,533,975	2,809,351	2,574,330
915,680	977,442	1,061,013	1,159,524	1,270,303	1,282,350
$1,417,315	$2,686,227	$2,896,492	$2,374,451	$1,539,048	$1,291,960
$27,250,131	$29,447,357	$32,639,494	$36,500,983	$38,958,898	$39,830,586
5.20	9.12	8.87	6.50	3.95	3.24

On the last line is shown the rate of return, but I would point out that such return would be reduced [fol. 442-a2] had the amount invested included a sum representing materials and supplies and working capital; furthermore, had depreciation in the early years been calculated at the same rates as those used in the more recent years, the rate of return for the early years would be still further reduced.

(Here follows statement marked side folio page 442-a3)

[fol. 442-a4] PORTION OF PAGES 30, 31, 33, AND 34, EXHIBIT 53, BY DELOS F. WILCOX, RATE EXPERT FOR CITY OF LOS ANGELES

Under the circumstances of this case, in view of the immense increment in land values included, the theoretical overheads and unit costs applied, and the fact that 60 per cent of the structural property in the inventory has been installed at the high prices of the war and post-war periods, the Historical Reproduction Cost less depreciation as reported by the engineers is believed to be a full and liberal measure of the fair value of the property for rate-making purposes. Hence, the rate base taken should not exceed $31,000,000.

The Rate of Return

The company claims an allowance of 8 per cent as the fair return upon its investment. The street railway business is not highly prosperous at the present time, and cannot expect to earn as liberal a rate of return as some other utilities. This company at the present time is paying five per cent on its bond issues, and is paying 5% and 6% on a large aggregate amount of notes outstanding. Under the circumstances, it seems that 7 per cent upon the fair present value of the property would be a sufficient return. In fact, the Los Angeles Railway Corporation, and its affiliated companies, in their amended petition filed September 25, 1924, in application No. 10303, sought permission to put into effect a financial reorganization which involved

the sale of $30,000,000 of refunding and new bonds bearing 5½ per cent interest, at 90, which would have meant a yield of about 6 per cent. The cost of money has not materially changed since that date. A rate of return that enables a utility to provide for the continuous flow of capital into the business to meet public requirements is a fair and sufficient return.

Amount of Return

On a Rate Base of $31,000,000 a return of 7 per cent would be $2,170,000 per annum, which is the measure of the gross income which should be available for return on the investment under the conclusions hereinbefore arrived at.

[fol. 442-a5] General Remarks

Whether the gross income required by the company can be procured by such measures as the abolition of free riding, the further development of advertising revenue, and a curtailment of operating expenses in certain accounts where the expenses incurred in 1926 seem to be abnormal, calls for further investigation.

The gross income of the company available for return on the investment for the year 1926 was $1,283,598, or $886,402, less than the amount required as above computed. Furthermore, if the company's revenues are increased, its taxes on gross earnings will be increased in the same proportion, and if its net income is increased, its Federal income tax also will be increased. The state gross earnings tax plus the city 2 per cent franchise tax in 1926 amounted to $729,945, or approximately 5.6 per cent of the gross earnings. The Federal income tax amounts to 13½ per cent on the net corporate income, which would be increased in nearly the same amount as gross revenues under an increase in rates. Of this Federal income tax a certain proportion, say 10/27 should be charged against the company in the form of a decreased return upon investment, but the balance, or 17/27, equal to 8½ per cent will be a net addition to operating expenses.

To provide for both the gross receipts tax and the Federal income tax chargeable to operation, it will be necessary

to increase gross revenues in excess of $1,000,000 in order to produce the $886,402.00 additional income required.

[fol. 442-a6] PORTION OF PAGE 1, PAGES 6, 7, 8, AND PORTION OF PAGE 9, PAGE 14, AND PORTIONS OF PAGE 15 AND PAGE 22, EXHIBIT NO. 63, BY JOHN E. COOPER, COMMISSION ASSISTANT ENGINEER

Subject: Application 13323, Los Angeles Railway Corporation to Readjust Rates

Mr. J. G. Hunter, Transportation Engineer, Building:

As per your instructions I have prepared the following report in connection with Application No. 13323 wherein the Los Angeles Railway Corporation asks the Commission for an order permitting it to increase the rates of fare on its street railway system.

In accordance with the plan of procedure this report has been limited in its scope to the study of financial re-
1 sults of operation and includes estimates of revenues, expenses and returns for the year 1927 computed on three bases. In brief these estimates are as follows:

Estimate of Financial Results of Operation, Year 1927

	Based on H. R. C. 5% sinking-fund annuity depr.	Based on H. R. C. L. D. straight-line annuity depr.	Based on R. C. N. L. D. straight-line annuity depr.
Net Income	$2,070,261	$1,492,553	$1,036,379
Return in Per Cent	4.9%	4.8%	2.8%
Increase Required to earn			
6%	715,840	502,820	1,414,982
7%	1,227,245	882,427	1,870,596
8%	1,738,650	1,262,052	2,326,211

The increases shown above include allowances for taxes and are amounts that will net the company 6%, 7% and 8% respectively as shown.

Respectfully submitted.

John Edw. Cooper, Assistant Engineer, Transportation Division.

* * * * * * *

Value of Operative Property as of December 31, 1926

Historical Reproduction Cost	$40,900,951
Historical Reproduction Cost less Depreciation	29,927,402
Reproduction Cost New	53,040,648
Reproduction Cost New Less Depreciation	36,159,547

6 In the depreciated values shown above, depreciation of buses was computed on the four-year basis used by the company. It was explained at the time Exhibit No. 52 was presented that this four-year life had been [fol. 442-a7] used pending the study of bus depreciation to be made in connection with studies of operation. The results of such studies will now be discussed.

The company has now been using buses a little over four years and has acquired a great amount of experience in the operation and maintenance of buses of different makes and types. The following described buses were owned by the railway on December 31, 1926, and operated in its own bus division and in the bus system jointly owned and operated with the Pacific Electric Railway:

Los Angeles Railway Corporation Passenger Buses

Type	Make	No. of buses	Single or double deck	Seating capacity
	Bus Division of Los Angeles Railway			
1	Yellow Coach	3	Single Deck	21
2	Moreland	1	Single Deck	25
3	Fageol	36	Single Deck	29
4	White	6	Single Deck	25
11	Mack	3	Single Deck	29
6	12 Fageol	1	Single Deck	21
13	Pierce Arrow	1	Single Deck	25
14	White	1	Single Deck	25
15	Yellow Coach	1	Single Deck	29
16	Fageol	9	Single Deck	29
17	Yellow Coach	1	Single Deck	29
7	Fageol	20	Double Deck	58
8	Moreland	7	Double Deck	59
10	Yellow Coach	5	Double Deck	63
18	Moreland rebuilt	1		
		96		
	L. A. Ry. Portion of Los Angeles Motor Bus			
1	White	2	Single Deck	25
2	Moreland	21	Single Deck	25
5	Moreland	3	Double Deck	59
6	Fageol	17	Double Deck	58
	Total	43		

In addition to owning the fleet of buses shown above, the company has just completed a large garage and
7 bus repair shop of the latest design and is now equipped in a manner to permit the most efficient and economical upkeep of buses. This should not only tend to decrease the cost of maintenance to a minimum, but should also, through proper inspection and upkeep, tend to lengthen the life of the equipment.

As shown by the above table, a large number of buses [fol. 442-a8] fall within a few standard types. Due to standardization, the maintenance of this equipment is performed whenever possible on a unit basis. The units are removed for repairs and replaced with units already serviced, which permits the repairs to be made in the shop in an economical manner and materially reduces the bus lay-up time. Practically all parts within each type are interchangeable, and in nearly all cases this includes the entire motor. Under such methods of maintenance, it would be possible to extend the life of any bus over a very long period, this period being governed almost entirely by economy of operation and by quality of service. From either of these standpoints, the limit of use will probably not be reached on any of the standard equipment for a period greatly in excess of four years. This is quite clearly indicated by the study made of maintenance cost and by the present condition of the buses. The company now owns a number of buses which have reached an age of four years more or less. On a four-year life basis as used by
8 the company, the entire cost of the following buses will have been accumulated by the end of 1927:

Assignment	Make	Single or double deck	Number of buses
L. A. Ry. Bus Div.....	White.....	Single Deck.....	6
	Moreland.....	Single Deck.....	1
	Fageol	Single Deck.....	20
L. A. Motor Bus.....	White.....	Single Deck.....	3
	Moreland.....	Single Deck.....	21
			51

The White buses shown above might possibly be retired this year. The company is in need of service equipment, and these buses, when rebuilt, are well suited to this service. However, the other buses are in good condition, are

quite similar to buses recently purchased, and under present maintenance methods, they may be continued in service for some time.

The estimated four-year life is here shown to be too short. This has resulted in a too rapid building up of the depreciation reserve and inasmuch as the entire reserve for these buses will have been accumulated during 1927, [fol. 442-a9] the depreciation amount to be set aside from operation will be subsequently reduced accordingly. The company has kept a record of the depreciation amounts set aside for each individual bus and could use either the group or unit method in accumulating the reserve. Under either of these methods, a very close check should be made in order that the estimated life might be adjusted to agree with the actual life as indicated by experience.

Such an adjustment is here suggested. In making this adjustment, it appears probable, due to methods of maintenance and operation, that the actual lives of different types of buses may vary to a considerable extent,
9 and consequently it seems reasonable to use a number of lives rather than a single average life for the entire fleet. For this reason, the buses have been grouped in three classes. It appears that the short life buses may be expected to last approximately four years. The second class is given a life of five years and the third class a life of six years. In general, the Fageol and Yellow Coach buses have been included in the last class. The Moreland buses have been included in the five-year, and all other buses in the four-year class.

Computing the depreciated values of the buses on the above basis rather than on a four-year life basis used by the company would result in a higher depreciated value of buses than that shown in Exhibit No. 52. Making this correction to the total values shown in Exhibit No. 52 results in the following four values of operative property as of December 31, 1926:

Historical Reproduction Cost	$40,900,951
Historical Reproduction Cost Less Depreciation	30,080,770
Reproduction Cost New	53,040,648
Reproduction Cost New Less Depreciation	36,313,470

[fol. 442-a10] The small amount of money spent
14 for additions and betterments during 1917, 1918 and 1919 was due to the curtailment of construction during the war period and due to this curtailment, the extremely large expenditures were made necessary during 1922, 1923 and 1924. The average annual increase in investment over the period was $1,568,552.00 as compared with the amount of $1,370,000.00 shown above.

Summarizing, the following totals are obtained:

Operative Property—Los Angeles Railway

	H.R.C.	H.R.C.L.D.	R.C.N.	R.C.N.L.D.
Value of Operative property as of Dec. 31, 1926, adjusted for new bus depreciation	$40,900,951	$30,080,770	$53,040,648	$36,313,470
Materials and Supplies to be used in operation or to be scrapped	328,081	328,081	328,081	328,081
Total	$41,229,032	$30,408,851	$53,368,729	$36,641,551
Work in progress	256,959	275,959	244,959	271,959
Materials and Supplies to be used in new construction	428,061	428,061	428,061	428,061
Total	$41,914,052	$31,112,871	$54,041,749	$37,341,571

Financial Results From Operation

A detailed study has been made of the financial results from operation during the past few years. Summaries of the operations as shown by the companies' records are included in the Joint Report, Railways Exhibit No. 9 and in subsequent exhibits bringing the tables contained therein up to date. Only the most pertinent of this information is repeated in this report.

On the following page is shown the financial results of the operation of the entire system over a number of
15 years, and on Page 17, gross operating revenue, operating expenses plus taxes, and net income are charted. The totals shown in the table represent the financial results from operation as shown by the company's [fol. 442-a11] records and consequently reflect depreciation estimated on a straight line basis.

There follows a statement showing the net income
15 for the last five years and the returns that would result from these incomes if computed with the Histori-

cal Reproduction Cost as a base. There is also shown for comparative purposes the approximate net incomes and returns that would have resulted had the five per cent sinking fund annuity method of computing depreciation been used.

Net Incomes and Approximate Return by Years

Year	Historical reproduction cost	Net income, straight-line depreciation	Rate of return	Net income, 5% annuity depreciation	Rate of return
1922	$31,419,954	$2,686,227	8.5	$3,043,669	9.7
1923	34,836,638	2,897,219	8.3	3,278,232	9.4
1924	38,792,236	2,374,924	6.1	2,879,307	7.4
1925	39,939,256	1,524,414	3.8	2,090,910	5.2
1926	41,229,032	1,280,547	3.1	1,910,466	4.6
	$186,217,116	$10,763,331	5.8	$13,202,584	7.1

The decrease in net income in 1924, 1925 and 1926 has been due to the increase in operating expense. The amount of service rendered during the last four years as measured in car and bus miles is as follows:

Application 13323

Los Angeles Railway Corporation

Income Statements

	1921	1922	1923	1924	1925	1926
Operating Revenue:						
Passenger	$10,065,714.66	$10,989,500.85	$12,511,260.47	$12,951,846.24	$12,708,733.45	$12,879,916.90
Other Rev. from Trans	7,040.41	8,985.46	9,606.00	9,839.74	8,925.12	7,202.06
Rev. from other Ry. Oper	48,761.78	120,387.61	124,569.47	135,739.74	134,460.16	134,363.50
Total Oper. Rev.	10,121,516.85	11,118,873.92	12,645,435.94	13,097,425.72	12,852,118.73	13,021,482.46
Operating Expenses:						
Ways and Structures	$586,889.04	504,470.18	508,473.52	573,532.74	704,126.25	827,307.80
Equipment	755,271.20	521,493.25	576,082.56	973,193.03	1,307,370.29	1,435,354.09
Power	1,035,414.83	974,357.96	1,018,767.43	1,004,361.55	1,023,872.44	1,050,724.16
Conducting Trans.	4,029,619.22	3,807,034.65	4,495,442.75	4,956,712.39	4,979,188.37	5,060,222.44
Traffic	38,747.52	37,841.16	33,932.61	23,054.25	24,710.53	26,097.07
General & Misc.	870,955.56	801,007.49	1,200,408.03	1,044,206.31	1,001,625.64	965,393.39
Sub-total	7,316,897.37	6,646,204.69	7,833,106.90	8,575,060.27	9,040,893.52	9,365,098.95
Depreciation*	915,679.99	977,442.00	1,082,383.36	1,279,386.83	1,466,495.66	1,565,899.62
Total Oper. Exp.	8,232,577.36	7,623,646.69	8,915,490.26	9,854,447.10	10,507,389.18	10,930,998.57
Net Operating Revenue	1,888,939.49	3,495,227.23	3,729,945.68	3,242,978.62	2,344,729.55	2,090,483.89
Taxes	480,000.00	809,000.00	832,726.36	868,054.40	820,315.51	807,925.78
Loss on retired bus	.....	.....	.....	.....	.....	960.77
Rent	.....	.....	.....	.....	.....	1,050.00
Operating Income	$1,408,939.49	$2,686,227.23	$2,897,219.32	$2,374,924.22	$1,524,414.04	$1,280,547.34

* Straight Line Annuity Method.

[fol. 442-a13] Operating expenses during 1922 and 1913 were below normal due to the method of charging general overhauling and painting of cars to the depreciation
22 reserve and not to operating expenses. The increase in 1923 over 1922 was largely due to the increase in car miles. The increase in operating expense during 1924 as compared with 1923 was due both to an increase in car mileage and to the inclusion in expense of the cost of overhauling and painting cars. The increase in 1925 and 1926 as compared with 1924 has been due to the reconstruction of a number of two motor cars into four motor equipment and to the inclusion in expense of the cost of removal of property retired and replaced. Prior to 1925 the entire cost of reconstruction work was charged to additions and betterments, including the cost of removal of property retired and replaced. This latter cost has been segregated during 1925 and 1926 and charged to operation.

[fol. 443] Portion of page 15, Exhibit No. 63

CALIFORNIA RAILROAD COMMISSION, ENGINEERING DEPARTMENT, TRANSPORTATION DIVISION

Los Angeles Railway Corporation

J. G. Hunter, Transportation Engineer. J. E. Cooper, Assistant Engineer

Application 13323

Report on Financial Results of Operations, August 8, 1927

There follows a statement showing the net income for the last five years and the returns that would result from these incomes if computed with the Historical Reproduction Cost as a base. There is also shown for comparative purposes the approximate net incomes and returns that would have resulted had the five per cent sinking fund annuity method of computing depreciation been used.

Net Incomes and Approximate Return by Years

Year	Historical reproduction cost	Net income, straight-line depreciation	Rate of return	Net income, 5% annuity depreciation	Rate of return
1922.....	$31,419,954	$2,686,227	8.5	$3,043,669	9.7
1923.....	34,836,638	2,897,219	8.3	3,278,232	9.4
1924.....	38,792,236	2,374,924	6.1	2,879,307	7.4
1925.....	39,939,256	1,524,414	3.8	2,090,910	5.2
1926.....	41,229,032	1,280,547	3.1	1,910,466	4.6
	$186,217,116	$10,763,331	5.8	$13,202,584	7.1

(Here follow side folio pages 444 and 445)

[fol. 444]

	L. A. Ry.
Operating Income:	
Passenger Revenue	$12,451,050.00
Other revenue from Trans.	9,606.00
Revenue from other Ry. Oper.	124,569.47
Total Operating Revenue	12,585,225.47
Operating Expense:	
Ways and Structures	508,473.52
Equipment	566,746.17
Power	1,018,767.43
Conducting Trans.	4,446,799.06
Traffic	33,891.96
General and Misc.	1,188,549.95
Sub-total	7,763,228.09
Depreciation	1,061,013.00
Total Operating Expense	8,824,241.09
Net Revenue Railway Oper.	3,760,984.38
Taxes:	
Income Tax	194,000.00
Taxes assign. to Ry. Oper.	636,000.00
Total Taxes	830,000.00
Operating Income	$2,930,984.38

[* Red in copy.]

Exhibit No. 63, Page 19

Los Angeles Railway Corporation

Income Statements by Transportation Units and Years

1923			1924			
L. A. Ry. Bus	L. A. Motor Bus	System	L. A. Ry	L. A. Ry. Bus	L. A. Motor Bus	Annual statement
$31,784.95	$28,425.52	$12,511,260.47	$12,577,881.34	$151,772.37	$222,192.53	$12,951,846.24
.....	.....	9,606.00	9,839.74	.....	.....	9,839.74
.....	.....	124,569.47	131,728.46	1,827.49	2,183.79	135,739.74
31,784.95	28,425.52	12,645,435.94	12,719,449.54	153,599.86	224,376.32	13,097,425.72
.....	.....	508,473.52	573,518.92	.....	13.82	573,532.74
8,558.32	778.07	576,082.56	901,264.52	37,792.10	34,136.41	973,193.03
.....	.....	1,018,767.43	1,004,361.55	.....	.....	1,004,361.55
30,719.39	17,924.30	4,495,442.75	4,721,785.05	112,598.10	122,329.24	4,956,712.39
.....	40.65	33,392.61	22,886.25	168.00	.....	23,054.25
7,260.15	4,597.93	1,200,408.03	1,003,998.01	15,818.68	24,389.62	1,044,206.31
46,537.86	23,340.95	7,833,106.90	8,227,814.30	166,376.88	180,869.09	8,575,060.27
11,188.00	10,182.36	1,082,383.36	1,159,524.00	58,173.99	61,688.84	1,279,386.83
57,725.86	33,523.31	8,915,490.26	9,387,338.30	224,550.87	242,557.93	9,854,447.10
25,940.91*	5,097.79*	3,729,945.68	3,332,111.24	70,951.01*	18,181.61*	3,242,978.62
.....	.....	194,000.00	150,000.00	.....	.....	150,000.00
1,497.21	1,229.15	638,726.36	705,000.00	5,544.83	7,509.57	718,054.40
1,497.21	1,229.15	832,726.36	855,000.00	5,544.83	7,509.57	868,054.40
$27,438.12*	$6,326.94*	$2,897,219.32	$2,477,111.24	$76,495.84*	$25,691.18*	$2,374,924.22

[fol. 445]

Los Angeles Railway Corporation

Income Statements by Transportation Units and Years

Exhibit No. 63, Page 20

	1925					
	L. A. Ry.	L. A. Ry. Bus	L. A. Motor Bus	Annual Statement	L. A. Ry.	L. A. Ry
Operating Income:						
Passenger Revenue	$12,087,518.60	$329,680.84	$291,534.01	$12,708,733.45	$11,985,143.83	$561,03
Other revenue from Trans.	8,925.12	.....	.....	8,925.12	7,202.06	.....
Revenue from other Ry. Oper.	128,133.67	2,679.72	3,646.77	134,460.16	126,112.72	4,12
Total Operating Revenue	12,224,577.39	332,360.56	295,180.78	12,852,118.73	12,118,458.61	565,15
Operating Expense:						
Ways and Structures	703,976.29	.....	149.96	704,126.25	826,549.39	.....
Equipment	1,173,515.49	77,168.40	56,686.40	1,307,370.29	1,197,327.25	171,56
Power	1,023,872.44	.....	.....	1,023,872.44	1,050,724.16	.....
Traffic	24,421.58	287.80	1.15	24,710.53	25,800.62	27
Conducting Trans.	4,621,301.13	212,886.63	145,000.61	4,979,188.37	4,537,712.27	354,25
General and Misc.	953,399.29	21,772.03	26,454.32	1,001,625.64	892,160.10	37,50
Sub-total	8,500,486.22	312,114.86	228,292.44	9,040,893.52	8,530,273.79	563,56
Depreciation	1,270,303.00	111,003.84	85,188.82	1,466,495.66	1,282,349.65	188,32
Loss on retired Bus.	.....	.....	.....	.....	.....	96
Total Operating Expense	9,770,789.22	423,118.70	313,481.26	10,507,389.18	9,812,623.44	752,85
Net Revenue—Railway Oper.	2,453,788.17	90,758.14*	18,300.48*	2,344,729.55	2,305,835.17	187,7
Taxes:						
Income Tax	46,000.00	.....	.....	46,000.00	29,000.00	.....
Taxes assign. to Ry. Op.	750,000.00	12,440.77	11,874.74	774,315.51	734,829.42	24,4
Total Taxes	796,000.00	12,440.77	11,874.74	820,315.51	763,829.42	24,4
Rent	.....	.....	.....	.....	.....	.....
Operating Income	$1,657,788.17	$103,198.91*	$30,175.22*	$1,524,414.04	$1,542,005.75	$212,1

*[Red in Copy]

1926		
L. A. Ry. Bus	L. A. Motor Bus	Annual Statement
$561,030.32	$333,742.75	$12,879,916.90
.....	.....	7,202.06
4,121.98	4,128.80	134,363.50
565,152.30	337,871.55	13,021,482.46
.....	758.41	827,307.80
171,560.06	66,466.78	1,435,354.09
.....	.....	1,050,724.16
275.05	21.40	26,097.07
354,226.45	168,283.72	5,060,222.44
37,500.50	35,732.79	965,393.39
563,562.06	271,263.10	9,365,098.95
188,336.18	95,213.79	1,565,899.62
960.77	.....	960.77
752,859.01	336,476.89	10,931,959.34
187,706.71*	28,605.34*	2,089,523.12
.....	.....	29,000.00
24,447.56	19,648.80	778,925.78
24,447.56	19,648.80	807,925.78
.....	1,050.00	1,050.00
$212,154.27*	$49,304.14*	$1,280,547.34

[fol. 446] Portion page 22, Pages 23, 24, 25, 26, and Portion Page 27, Exhibit No. 63

The bus divisions, due to their rapid growth, have shown a steady increase in expense. With the relatively small amount of revenue earned as compared with the expense of operation, these units of transportation have been unable so far to earn operating expense and taxes. The operating expenses recorded for bus operations are only the direct "out of pocket" costs and practically no allocation of common or general expense is made. Such an allocation, if made, would increase the bus division expenses and loss and would result in a higher return on the railway division.

The bus divisions have been operating for approximately four years and have passed through the first cycle of development. The traffic on a number of lines has increased to a point where full capacities have been reached and additional busses have been added to the routes. However, it appears that the cost of operation is such that even with this heavy traffic, the busses under present conditions and methods of accounting can not be expected to earn but little more than operating expenses.

In most cases, the bus routes constitute extensions or feeders to the railway system. These routes are operated in the outlying and sparsely settled territory or are cross town lines and a large part of their load is made up of transfer passengers. The revenue earned by these busses is small and the losses are relatively large. Due to the flxibility of the busses this additional service is made possible where rail service would probably not be justified for some time. However, the flexibility feature, which makes this additional service possible, may develop into a liability in that requests for bus service may be pressed under circumstances that would hardly justify service of any kind. The fares on these lines are in most instances five cents with transfers, but on a number of lines, the transfer is omitted.

[fol. 447] The remaining bus lines are through lines and offer a service more or less independent of the railway system. These lines are four in number, consisting of the Figueroa Street, Wilshire Boulevard and Mines Avenue lines operated by the railway bus division and Sunset

Boulevard, operated by the Motor Bus division. The routes extend from the outlying territory through to the center of town and along the greater portion of this distance the busses are in competition with the rail lines. While they earn approximately 54% of the entire bus revenue and operate with capacity loads the company's records indicate that they have not as yet been able to earn operating expenses and taxes. However, their loss is only approximately 30% of the total bus loss, which indicates a greater earning power than the balance of the system. These lines operate with a ten cent fare, including transfers.

The income statements for these two groups of bus lines as shown by the company's records follow:

Bus Income Statements, Year 1926

	Feeder & extension bus lines	Through bus lines	Total for bus divisions
Operating Revenue	$409,278	$493,746	$903,024
Operating Expense:			
Expense	433,647	401,178	834,825
*Depreciation	135,489	149,022	284,511
Total	569,136	550,200	1,119,336
Net Revenue	159,858†	56,454†	216,312†
Taxes	20,827	23,269	44,096
Rent	1,050	.....	1,050
Net Income	181,735†	79,723†	261,458†

[fol. 448] The company as previously discussed has set aside depreciation for busses on a straight line annuity basis using a four year life. If the depreciation is computed by using a 5% sinking fund annuity based on the lives outlined in this investigation, the annuity amount would be reduced $107,461, (from $284,511 as used by the company to $177,095.) Using $177,095 for depreciation, the following statements result:

(*Computed on straight line four year basis.)
[†Red in copy.]

Bus Income Statements, Year 1926

	Feeder & extension bus lines	Through bus lines	Total for bus divisions
Operating Revenue	$409,278	$493,746	$903,024
Operating Expense:			
Expense	433,647	401,178	834,825
*Depreciation	84,445	92,650	177,095
Total	518,092	493,828	1,011,920
Net Revenue	108,814†	82†	108,896†
Taxes	20,827	23,269	44,096
Rent	1,050	.....	1,050
Net Income	130,691†	23,351†	154,042†

The City of Los Angeles has developed quite rapidly during the last few years, and the residential section has spread out over a very wide territory. While the service has been increased somewhat during these years as measured in car miles, there has not been a comparable increase in street railway lines. This is quite clearly indicated by the following table showing the miles of single track by years.

Operative Single-track Miles at End of Year

1917	369.940
1918	366.460
1919	367.563
1920	369.237
1921	363.213
1922	363.156
1923	369.542
1924	370.117
1925	373.178
1926	374.302

[fol. 449] Undoubtedly quite a number of extensions would have been installed had the company not furnished the service through the medium of busses. In the early

(*Computed on a 5% sinking fund annuity basis and adjusted lives.)
[†Red in copy.]

development of the territory so served, the traffic is usually light, and the operation must therefore result in a loss regardless of the type of transportation units used. With this light traffic and in the experimental stages, the bus offers a transportation system with considerably less investment than would obtain if street cars were used. However, as traffic increases and the route becomes fixed by development, a point is reached beyond which the street car becomes the more economical means of transportation and will afford the better service. In the early development of these extensions, the existence of the bus is justified but when traffic becomes sufficiently heavy, street railway service should be substituted.

The through lines are operated under different circumstances. The territory along a large portion of their routes is highly developed. This territory is in general now served by the street railway lines which operate at a much smaller cost per passenger than is the case with busses. The extreme end of most of the through bus routes extend out into the undeveloped territory where bus transportation may be justified, but service could be given in this territory by feeder lines exactly as it is furnished in other parts of the City. In that these bus lines give a more or less independent service in competition with the rail lines, their justification seems to be in that the service is desired by the public. In this event it seems reasonable that they should be considered as a separate unit of transportation, independent of the remaining system. This attitude, however, has not been reflected in the estimates of operations for the ensuing year for the reason that, in the short time busses have been operated, it is thought no crystalized policy has been formed by the company. The estimates [fol. 450] of future operations will consequently include the bus divisions as operated.

Estimate of Future Results from Operation

There has been prepared and included in this report estimates of the financial results that may be expected from operations during 1927. These estimates are based
27 to a large extent upon the service rendered at the close of 1926. However changes in this service, that

[fol. 451]

	5% Sinking Railway Division
Operating Revenue	$12,115,000
Operating Expense:	
Expense	8,372,400
Depreciation	760,500
Total Expense	9,132,900
Net Operating Revenue	2,982,100
Taxes	775,980
Net Income	2,206,120
Base for Computing Return	40,121,113
Return	5.5%
Increase in Gross Revenue necessary to net a	
6% Return	407,340
7% Return	913,454
8% Return	1,408,732

[*Red in copy.]

Exhibit No. 63, Page 29

CALIFORNIA RAILROAD COMMISSION, ENGINEERING DEPARTMENT, TRANSPORTATION DIVISION

Los Angeles Railway Corporation

Application 13323

Estimate of Financial Results of Operation, Year 1927

	ing Fund Annuity Depreciation—H. R. C. Rate Base			Straight Line Annuity Depreciation—H. R. C. L. D. Rate Base				Straight Line Annuity Deprec	
	Railway Bus Div.	L. A. Motor Bus	System	Railway Division	Railway Bus Div.	L. A. Motor Bus	System	Railway Division	Railway Bus Div.
0	$770,000	$369,000	$13,254,000	$12,115,000	$770,000	$369,000	$13,254,000	$12,115,000	$770,000
0	712,003	284,130	9,368,533	8,372,400	712,003	284,130	9,368,533	8,372,400	712,003
0	156,208	62,501	979,209	1,308,738	177,178	71,001	1,556,917	1,763,308	178,422
0	868,211	346,631	10,347,742	9,681,138	889,181	355,131	10,925,450	10,135,708	890,425
0	98,211*	22,369	2,906,258	2,433,862	119,181*	13,869	2,328,550	1,979,292	120,425*
0	38,586	21,431	835,997	775,980	38,586	21,431	835,997	775,980	38,586
0	136,797*	938	2,070,261	1,657,882	157,767*	7,562*	1,492,553	1,203,312	159,011*
3	1,278,704	514,235	41,914,052	29,795,740	1,004,907	312,224	31,112,871	36,009,325	1,016,185
%	.....	0.2%	4.9%	5.6%	.....	.....	4.8%	3.3%	.....
0	260,331	48,169	715,840	231,306	238,781	32,733	502,820	1,154,115	230,660
4	263,978	49,813	1,227,245	598,395	248,339	35,703	882,437	1,593,080	243,358
2	275,437	54,481	1,738,650	963,270	259,587	39,195	1,262,052	2,032,198	255,943

, TRANSPORTATION DIVISION

on

on, Year 1927

nuity Depreciation—H. R. C. L. D. Rate Base			Straight Line Annuity Depreciation—R. C. N. L. D. Rate Base			
Railway Bus Div.	L. A. Motor Bus	System	Railway Division	Railway Bus Div.	L. A. Motor Bus	System
$770,000	$369,000	$13,254,000	$12,115,000	$770,000	$369,000	$13,254,000
712,003	284,130	9,368,533	8,372,400	712,003	284,130	9,368,533
177,178	71,001	1,556,917	1,763,308	178,422	71,361	2,013,091
889,181	355,131	10,925,450	10,135,708	890,425	355,491	11,381,624
119,181*	13,869	2,328,550	1,979,292	120,425*	13,509	1,872,376
38,586	21,431	835,997	775,980	38,586	21,431	835,997
157,767*	7,562*	1,492,553	1,203,312	159,011*	7,922*	1,036,379
1,004,907	312,224	31,112,871	36,009,325	1,016,185	316,061	37,341,571
.....	.....	4.8%	3.3%	.....	.....	2.8%
238,781	32,733	502,820	1,154,115	230,660	30,207	1,414,982
248,339	35,703	882,437	1,593,080	243,358	34,158	1,870,596
259,587	39,195	1,262,052	2,032,198	255,943	38,070	2,326,211

have already been made during 1927, were considered and are reflected in the estimates.

In making the estimates the revenues and expenses over a long period were carefully studied particularly those during the last five years. Charts were prepared showing the trends of all the major operating expenses and all decided breaks indicated by these charts were analyzed, in order that they might be given proper weight in the final estimates. These changes in expense totals, as well as the general accounting methods, were taken up with the company's representatives and were explained by them in detail. In such manner the final estimates were developed. Studies were then made of the operations during the first five months of 1927 and by these studies the reasonableness of the final estimates are checked.

The estimates are shown on the following page and are set up on three bases. First is shown the estimated financial results from operation using the Historical Reproduction Cost as a basis for computing depreciation and return, the depreciation in this instance being calculated by a five (5) per cent sinking fund annuity method. Second is shown the estimated financial results from operation using the Historical Reproduction Cost as a basis for computing depreciation and the Historical Reproduction Cost Less Depreciation for computing the return. In this instance depreciation is calculated by the straight line annuity method. Third is shown the estimated financial results from operation using the Repro-
[fol. 450-a1] duction Cost New as a basis for computing depreciation and the Reproduction Cost New Less Depreciation for computing the return. In this latter instance depreciation is calculated by the straight line annuity method.

(Here follows side folio page 451)

[fol. 451-a1] The above estimates show that the company may expect during 1927, a return from its railway operations varying from 5.5% to 3.3% according to the basis used from computing such return, but that

the bus operations will result in a considerable loss under all three bases.

The amounts shown at the bottom of the table include allowances for taxes and are amounts, which when taxes are deducted, will net the company returns of 6%, 7% and 8% computed on the bases shown above.

[fol. 451-a2] Pages 1, 2, and Portion of Page 3, Exhibit No. 64, by A. G. Mott, Commission Chief Engineer

Subject: Results of Studies Relating to Various Forms of Fares on the Los Angeles Railway and Certain Modifications of Operating Methods

Purpose of Report

The purpose of this report is to set before the Commission the results of certain studies that have been made with respect to possible means of increasing the net operating income on the Los Angeles Railway.

Scope of Report

This report deals with the probable result on the
1 gross revenue of the Los Angeles Railway, due to making effective of any one of the following fare plans:

1. 6¢ cash fare,
2. 6¢ cash fare with 9 tokens for 50¢,
3. 7¢ cash fare with 10 tokens for 50¢,
4. 7¢ cash fare with 9 tokens for 50¢,
5. 7¢ cash fare with 4 tokens for 25¢,
6. 10¢ cash fare with 10 tokens for 50¢,
7. 10¢ cash fare with 9 tokens for 50¢,
8. 5¢ zone fare.

The report also deals with the economies that might be effected by the application of the principle of one-man operation under the two general plans:

(1) One-man operation outside of congested area.

(a) Two-man operation in congested area all hours.

(b) Two-man operation in congested area part time only.

(2) One-man operation over the entire system.
(a) Ground conductors all hours.

Fundamental Railway Requirements

The exhibits that have heretofore been introduced by Valuation Engineer Dufour and Assistant Engineer
2 Cooper indicate estimated financial results of operation under three typical set-ups as follows:

[fol. 451-a3]

Table I

Los Angeles Railway Corporation—System

Estimated Financial Results of Operation, Year 1927

	Based on H. R. C 5% sinking-fund depreciation	Based on H.R.C.L.D., straight-line depreciation	Based on R.C.N.L.D., straight-line depreciation
Operating Revenue	$13,254,000	$13,254,000	$13,254,000
Operating Expense:			
Expense	9,368,533	9,368,533	9,368,533
Depreciation	979,209	1,556,917	2,013,091
Total Expense	$10,347,742	$10,925,450	$11,381,624
Net Operating Revenue	2,906,258	2,328,550	1,872,376
Taxes	835,997	835,977	835,977
Rent	.....	.....	.....
2 Operating Income	2,070,261	1,492,553	1,036,379
Basis for computing return	41,914,052	31,112,871	37,341,571
Return	4.9%	4.8%	2.8%
Increase in gross Revenue necessary to net a			
6% Return	715,840	502,820	1,414,982
7% Return	1,227,245	882,437	1,870,596
8% Return	1,738,650	1,262,052	2,326,211

Explanatory Note

Column 1.—Statement of the results of operation and rate of return, using a historical reproduction cost undepreciated for a rate base, and a 5% sinking fund annuity for depreciation calculated on the historical reproduction cost.

Column 2.—Statement of results of operation and rate of return using the historical reproduction cost depreciated as a rate base and a straight line annuity for depreciation calculated upon the historical reproduction cost.

3

Column 3.—Statement of results of operation and rate of return using the reproduction cost new depreciated as a rate base and a straight line annuity for depreciation calculated upon the reproduction cost new.

[fol. 451-a4] It should be noted that the method shown in Column 1 in the foregoing table is the one that has been most frequently used by the Commission in testing the reasonableness of rates; that the method shown in Column 2 is the one advocated by the City (Mr. Wilcox's testimony, Exhibit No. 53, page 28), and that this is also consistent with the priciples announced by the Interstate Commerce Commission in its recent decision regarding the St. Louis and O'Fallon Rwy. (Finance Docket No. 3908); and the third method is the method apparently favored by the Company (Mr. Richard Sachse's Report, Exhibit No. 20, page 36).

At the conclusion of Mr. Cooper's report on Financial Operations it is shown that under each of the three plans of calculation the Company failed to earn as much as 7% by the following sums:

First	$1,227,245
Second	882,437
Third	1,870,596

For the purpose of having a basis of comparison of the various proposals, hereinafter described, the first amount has been used as indicative of the present reasonable requirements of the company.

[fol. 452] (Portion of Exhibit No. 64)

CALIFORNIA RAILROAD COMMISSION, ENGINEERING DEPARTMENT

Application 13323

Los Angeles Railway Corporation

A. G. Mott, Chief Engineer

Results of Studies Relating to Various Forms of Fares on the Los Angeles Railway and Certain Modifications of Operating Methods

San Francisco, Calif., August 8, 1927

CALIFORNIA RAILROAD COMMISSION, ENGINEERING DEPARTMENT, TRANSPORTATION DIVISION

Los Angeles Railway Corporation

Application 13323

Table No. IX

Estimated Effect of Various Fare Systems and Changes in Plans of Operation

	Per cent use of tokens	Deflection in traffic	Increase in gross rev.	Ret. on H. R. C.
Straight 5¢ Cash	0	0	0	4.9%
Straight 6¢ Cash	0	5%	$1,690,000	7.9%
6¢ Cash Fare—9 Tokens for 50¢.	75	2.5%	1,268,000	7.1%
7¢ Cash Fare—10 Tokens for 50¢	85	2%	470,000	5.5%
7¢ Cash Fare—9 Tokens for 50¢.	85	3.5%	1,377,000	7.3%
7¢ Cash Fare—4 Tokens for 25¢.	80	6%	2,454,000	9.4%
10¢ Cash Fare—10 Tokens for 50¢	90	2.5%	977,000	6.5%
10¢ Cash Fare—9 Tokens for 50¢	90	4%	1,836,000	8.2%
5¢ Zone (Small Inner Zone)	0	1.8%	1,935,000	8.4%
5¢ Zone (Large Inner Zone)	0	0.5%	1,140,000	6.7%
One man-two man Operation Straight 5¢ Cash Fare				
(a) All day	0	0	748,000*	6.7%
(b) 100% One man Operation after 7 P. M.	0	0	868,000*	7.0%
One man Operation with Ground Loaders, Straight 5¢ cash fare	0	0	723,000*	6.5%
One man Operation with Ground Loaders 5¢ Zone (Large Inner Zone)	0	0.5	.....	8.3%

*Net Annual Increase in Net Income.

[fol. 452-a1] COMPANY'S EXHIBIT #68

Application 13323

Estimates Based Upon Plans of One-man Operation in Exhibit 64

Plan 1

(a) Two-man Operation in Congested District, One-man Operation Outside Congested District

Sec. "A," Saving in Platform Wages		$163,863
Less Additional Expense:		
Schedule Dept	$10,000	
Instruction Dept	10,000	
Transfer Bureau & Div. Offices	11,000	
Flagmen R. R. X'ing	23,000	
Cashiers	8,000	
	$62,000	62,000
		$101,863
Less carrying charges (interest and depreciation) on cost of conversion of cars for one-man operation, approximately		170,000
Loss		$68,137

(b) Same as (a) Except All One-man Operation After 7 P. M.

Saving in Platform Wages		209,488
Less Additional Expenses as above	62,000	62,000
		$147,488
Less carrying charges as above		170,000
Loss		$22,512

Plan 2

One-man Operation With Ground Loaders

Saving in Platform Wages		$1,482,787
Less Additional Expense Instruction Dept.	10,000	
Transfer Bureau & Div. Offices	11,000	
Flagmen R. R. X'ing	23,000	
Ground Loaders	707,148	
	751,148	751,148
		731,639
Less carrying charges as above		170,000
Net increase in gross revenue		$561,630

[fol. 452-a2] In United States District Court

Testimony Before the Railroad Commission

In Narrative Form

Transcript Before the Railroad Commission

Affidavit of H. G. Mathewson

R. O. Crowe, a witness called in behalf of the Los Angeles Railway Corporation, testified as follows:

9 I am the auditor of the Los Angeles Railway Corporation and have been for seven years. I am familiar with the accounts and books of the Company; they are kept under my direction.

10-11 The only dividends paid by the Los Angeles Railway Corporation since its existence were paid beginning in July, 1911, and ending in December, 1913; the total amount being $1,500,000. These dividends were paid in bonds of City Railway Company of Los Angeles for the reason that the company had constructed certain property and in order to finance that construction had to issue bonds.

These bonds were taken at par in lieu of cash for dividends at this time. There was not a market for the bonds at that time and they were taken in lieu of a cash dividend.

79-80 I have made an estimate (Exhibit 21) of operating results of the Company for the year 1927 assuming present conditions, which means existing rates and without any allowance for any unusual or any extraordinary expenses. It is just a projection of our present expenses into 1927.

533 In response to the California Railroad Commission's statement in its decision denying the interim rate application that there was not "any satisfactory explanation in the record of the material increase in the company's operating expenses from 1923, to date," I 534 prepared a report making an analysis of those ex- 535 penses by control accounts. Our total operating expenses per car mile shows 30.49 cents, compared with 33.71 cents for 231 electric railways for 1926, and 33.63 cents for 98 city electric railway lines. The operating expenses per total passenger for 231 companies showed 4.68 [fol. 452-a3] cents per passenger; for the Los An- 536 geles Railway 2.93 cents. I have given actual details and facts as to the principal increases and the figures do not indicate wasteful or unusual, or inefficient expenditures.

Cross-examination:

142 In some years the earning of the company were not sufficient to pay the operation and the maintenance and upkeep of the property and still pay the bond interest. The company because of non-payment of these inter- 143 est charges could be placed in default by the holders of the bonds at any time the bondholders so desired, but there has been no demand made upon any of the trustees under the various mortgages to declare the company in default because of non-payment of interest.

P. B. Harris, a witness called on behalf of the Los Angeles Railway Corporation, testified as follows:

15 I have been identified with the company in the Engineering Department about twenty or twenty-

five years, and an now and have been chief engineer of the company since 1919. I have made a careful estimate of proposed capital expenditures for the three-year
121 period beginning in 1927 and ending in 1929. The estimates of necessary expenditures for renewals and additions and betterments during the period of three years shown by my statement (Exhibit 41) are the absolute minimum that have to be made during that period.
414 As to our maintenance program for the year 1926, I am sure that we spent the absolute minimum. We could not have gotten along by spending any less. And in the estimate (Exhibit 41) for maintenance and the
415 other engineering features that I have had anything to do with for the year 1927, I have cut everything to the minimum.

[fol. 452-a4] RICHARD SACHSE, a witness called on behalf of the Los Angeles Railway Corporation, testified as follows:

21 I am an engineer and am very familiar with this entire property, have been for at least ten years, and more so in the last three or four years. I assisted in the making of a complete and detailed inventory and report of the properties of the Los Angeles Railway Corporation and of the City Railway Company of Los Angeles (Ex-
22 hibits 9 and 9A). This report was made upon the initiative of the California Railroad Commission but not specifically for a rate case but rather in connection with the general street railway survey made jointly by the Engineering Departments of the Commission, of the Board of Public Utilities of the City of Los Angeles and the engineers of the railway companies. It was to my knowledge the most detailed and the most complete investigation, not only of valuation but of other matters, that has ever been made of any street railway property in California, and
26 possibly of any utility in California. The report as
28 it applies to this company consists of four volumes.
28 The report deals quite fully with the physical and the service and financial history; it deals with the present operations and the operations for as long a period of years as it was possible to investigate with any degree

of accuracy; it deals with equipment; the motor bus
29 situation; the franchise situation; and to some extent with the rate situation; with general traffic conditions of the City of Los Angeles and gives very complete statistics of traffic, operation and service for the Los Angeles Railway beginning with 1912 which was the year when regulation became really effective in California. There is included a complete and detailed valuation of the property.

23 The report is signed by Lester S. Ready, Chief Engineer of the California Railroad Commission, J. Ogden Marsh, Chief Engineer of the Board of Public Utilities and Transportation, City of Los Angeles and by the witness.

30 [fol. 452-a5] I know it is a very unusual situation to have as complete and reliable data as these in this report. The entire survey was made under the very active supervision and direction of the Railroad Commission. The Railroad Commission for this entire period had a large number, as high as ten or more, of its engineers in Los Angeles continuously. All work was lined up and directed; the methods were determined jointly by the engineers of the City and of the Commission, and the company accepted all of this procedure. Where the companies thought their own views differed to such an extent that we wanted to investigate on our own basis we did so, but presented those things separately.

31 Absolute agreement was reached by all of the engineers who made the report on all matters except certain items of valuation.

37 I have prepared a report, Exhibit No. 20, on Investigation Valuation, Depreciation, Rate Base and Fair Return, and tried to summarize all the factors for elements that usually have to be taken into consideration in finding the proper fair return.

69 With reference to fair return my conclusion is that 8 per cent is a fair rate of return on the proper rate base. The fair return can be divided into two parts, one being the actual out of pocket cost of money to the company which I know will be found for the Los Angeles Railway to be not less than 6½ per cent; actually between 6½ and 7 per cent. I want to point out that this cost of money of

the Los Angeles Railway is somewhat lower than on other transportation companies in California and elsewhere, for the reason that the credit of the company is unusually good by reason of its control and ownership. If 8 per cent is taken as a fair return it will be noted that that is 1½ per cent above the actual cost of money to the Company. I think that increase over the actual cost of money—and by "money" I mean bond money only—is a very small margin over the point of confiscation, considering that out of that must come such dividends as there may be, amortization of [fol. 452-a6] securities, surplus and the general element of risk that goes with this kind of a property. I believe
70 there is also no question that if risk is considered, the risk from the investor's standpoint in street railway property is at least as hazardous as in electric or gas companies where the California Commission has repeatedly taken the rate of return as 8 per cent. The company is not now earning 8 per cent upon the fair value of its property and is earning slightly in excess of 3 per cent.

I have made an estimate of what compensation the Company will earn if the schedule of rates proposed in the application (7¢ cash fare, 4 token for 25¢=6¼¢ fare) is put into effect. It will earn in the year following the effective date of the rate not more than 7.2 per cent assuming
71 that there will be a 5 per cent curtailment in traffic by reason of the increased rates during the period of the first year.

I am familiar with other street railway systems in this country and elsewhere and have made a particular
72 study of a number of them. Comparing the character and quality of the service in other systems it is the equal of any of them. And if length of haul, frequency of service and cost of service are compared it is the superior of any of the systems that I specifically investigated. There is no doubt that the value of the service rendered by this company is higher than the average.

I have prepared, together with Mr. Crowe and
85 Mr. Campbell, an estimate of cost of service and of revenue under proposed rates (Exhibit No. 22). This estimate does not include any unusual expenses
86 and assumes present day operations with a normal increase of capital expenditures and with the ex-

pense of depreciation figured on the straight line method, and based upon the lives in the joint report. The railway revenues represent the total income if the rates we are asking for are put into effect by the Commission, that is 7 cents as a cash fare and 6¼ cents for the token fare. In [fol. 452-a7] order to make this estimate it is necessary to make certain assumptions as to what proportion of riders will use the tokens and what proportion will use the 7 cent fare. I believe that during the first year about 90 per cent will pay the token fare. It is also necessary to esti-

87 mate the effect on revenues of a rate increase in general. I have had to make a number of such estimates. The last one was in Oakland. A 7½ per cent reduction of revenue passengers was estimated by reason of the increase in fare, but the experience of the company proved that the estimate was low. Nevertheless, I believe in Los Angeles the 5 cent fare is so unusually low that there will not be a very great effect on the riding habits or the number of riders by reason of the proposed increase. I have estimated that it will be 5 per cent. It may be higher. It may be as high as 7½ per cent. The estimate shows the results both for the 5 per cent curtailment and for a 7½ per cent curtailment. If a 5 per cent falling off in traffic occurs the company will earn over and above operating expenses, depreciation and taxes, a fair return of $3,235,557, which will fall short by $364,443 of an 8 per cent return on the lowest of the rate bases I have presented, namely, $45,000,000. If there should be a greater curtailment, as high as 7½ per cent, the falling short of the 8 per cent return would amount to $742,169.

88 There was an actual reduction in revenue passengers in 1926, compared with 1925, even with the 5 cent fare. I believe that if there were no change in fare there would be very little increase, if any, in 1927 over 1926.

128 I have prepared an exhibit (Exhibit No. 43) entitled Depreciation Estimate on the Straight Line Method and on the 5 per cent Sinking Fund Method for the year 1927. It will perhaps be recalled that this question of what the proper allowance for depreciation should be, to be included in operating expenses, was gone into to some extent at the last hearing, and in the estimates that

were introduced then we included for that item the amount [fol. 452-a8] actually charged on the company's books. We did not have completed an actual estimate based on the valuation and inventory quantities as of December 31, 1926, but that work was then in progress. It has
129 now been completed. On the straight line basis, taking historical reproduction cost, not reproduction cost new, as a basis, the actual depreciation that will accrue on this property in the year 1927 will be $1,521,803, if overheads are excluded and considered non-depreciable property. If overheads are included and considered depreciable property, that sum will be $1,695,418. The similar amounts on the sinking fund basis will be, overheads excluded, $994,-175, and $1,083,661, if overheads are considered depreciable. I should like to make it as clear as I can that in these depreciation estimates every property item is given exactly the same treatment as in the valuation. In other words, if the position is taken that our property depreciates at such and such a rate and there is a deduction made from the valuation at that rate, the same
130 treatment is given that property in this set-up. The depreciation as figured in this estimate, rather than the amount that the company has actually set aside at this time in its books, reflects what actually happened and will happen in 1927, with the property of this company.
132 I have prepared one more exhibit (Exhibit No. 45) being a revision of a similar former exhibit and showing what the estimate of operations would likely be in the years 1926 and 1927 under present fares. It is revised, particularly in the item of depreciation that I have just spoken of, and also revised on the basis of the latest
133 available facts of our revenue from transportation, and of our expenses. The estimate shows for both rail and bus operations what the operating income will be; this amount being available for bond interest and other fair return purposes. The amount will be $691,882. This amount will be equivalent to an 8 per cent return on a value of the company's property, or a rate base of $8,648,-[fol. 452-a9] 525. We discovered an error in Ex-
333 hibit No. 45 and have re-written it and marked it "Revised" 45-A.

722 If the operating expense allowance for depreciation is made on the sinking fund basis the sinking fund must be allowed to earn the percentage assigned to it (5% in this case) or else you do not get enough depreciation. If the money is included in the company's property, as it is here, and you were to allow a 7% rate of return for all of the property and 5% out of that 7 on the portion of the property acquired with depreciation fund money is not available for return at all, but is necessary in order to make good depreciation, then the remainder of that return is 2%. And out of that 2% has to come everything that is included in fair return, such as interest on bonds, amortization, dividends, surplus and so on. If you allow an earning of 8% and 5% goes towards making good the sinking fund depreciation then the real fair return is not 8 but 3%, and of course that is entirely inadequate. And so the columns 1, 2, 3 and 4 and the figures arrived at in Mr. Cooper's set-up (Exhibit No. 63) are unquestionably deficient to the extent that no allowance is made in the necessary operating revenue to earn the 5% on the depreciation fund.

725 I do not say that if the depreciation fund is invested in the property it must be allowed the same fair return that the Commission allows for the property as a whole. But there must be provided for in revenue, as an operating expense, the 5% that you would get if you had the fund in outside bonds. Otherwise your depreciation fund on the sinking fund basis does not work. If you set aside sinking fund depreciation, which, per annum, is a great deal less than straight line depreciation, the sinking fund must earn the interest. If that is not earned then you are short by that much in your depreciation, and that sinking fund can earn in only two ways, either by having the fund outside, and then the Commission is not concerned with it except that it is not dissipated, or it is inside and [fol. 452-a10] then it is a part of the rate base and there must be an allowance made for that fund and that has not been done.

726 To give the Commissioner, as he requests a formula of what should be done to accomplish that purpose I would say that an allowance should be made of a

5% earning on the amount in the accumulated sinking fund depreciation reserve and this allowance must be added to the operating expenses; that is the formula. To apply this formula for a practical work-out on the basis of Mr. Cooper's exhibit (Exhibit No. 63) the estimated amount in the reserve would be the difference between the undepreciated and the depreciated historical reproduction cost figures, this difference being, according to Mr. Cooper, $9,788,080. That is the amount that the property now in existence has depreciated according to the Commission's engineers sinking fund estimate and that is something that must be made good some time. The depreciation reserve is established for that purpose. But in order to do that that amount of $9,788,080 has to earn 5% to the extent that it is not spent year by year for renewing property, and if the reserve does not earn that amount the company is short by just that difference; that is the point.

Cross-examination:

163 The standard of maintenance of the railroad during the last two or three years has been about the same as previously with the exception of the very recent period when I think it is beginning to slip, perhaps. This is because we have to begin to save on all odds and ends.

168 If the sinking fund method for accumulation of a depreciation reserve is used the method contemplates that there will be an earning from the depreciation reserve at a certain rate of interest which will have to be added to the reserve each year and compounded. You have to pro-[fol. 452-a11] vide for that earning in the sinking fund method. That means you either have to make provision that the money is not invested in railroad property and is invested in outside securities where it can earn five per cent, if five per cent is taken as the annuity rate. That five per cent earning then goes to the fund. If you allow the reinvestment of the sinking fund in railway property, and as there is no other source of income for the railway than from rates, then you must include in your rate set-up a sufficient amount to provide for the five per cent earnings of the sinking fund. Otherwise you won't get your five per

cent earnings. There is no particular advantage to
169 the rate payer in using the sinking fund method except that if you carry forward the sinking fund theory in good faith and consistently over a period of years you are absolutely sure that you have the money for the replacement of the property, while if you don't, and invest the sinking fund in the property, you will get into a condition where the sinking fund investment will not earn you anything. That is the situation we are in to quite a degree at this time, and if that goes on for any length of time there is only one outcome; the property is going to run down and the service runs down. That is the history of a great many street railway properties in the United States; that is no secret. A few years ago the witness, as
229 chief engineer of the Railroad Commission together with the chief engineer of the Board of Public Utilities of the City of Los Angeles and their assistants, after a survey brought about a reduction of something in excess of a million dollars in annual operating costs. Perhaps seventy-five per cent of those savings were brought about by rerouting. It was absolutely necessary in order to make those operating savings to have the cooperation of the City and because of the insistence of the Commission the Company did have the cooperation of the City to some degree and the City gave the necessary permits to reroute the cars and franchise conditions had to be more or less [fol. 452-a12] forgotten in order to enable this re-
230 routing. If I remember correctly this enabled the same service with a reduction of something like thirty per cent in car mileage. I would say that to a considerable extent the management of the Company could not have brought this about, even if they had wanted to, without the initiative of the Commission and the cooperation of the City. The departments of the City that I have had anything to do with have always been anxious to cooperate.

234 The basis of my statement that the cost of money to the Company does not fall below six and one-half per cent was as follows: There are several sources of capital money; there is bond money to a certain extent, about one-half, which costs the Company somewhat over five per cent. Then there is other money to make up the balance between

the bond money and the total investment. That money costs the Company more. The interest the Company
235 pays on its notes is five and six per cent, with the average somewhat over five and one-half per cent. Another index that in my opinion shows the cost of the money to the Company is the market price of the Company's bonds at this time. You can buy the Company's bonds on a six per cent earning basis and at the time of this statement somewhat in excess of six per cent. The six and one-half per cent is to reflect the present day cost of money. The historical cost over the period of the Company's existence has been somewhat lower, between five and six per cent; closer to six than to five. No actual study was made of that and my suggestion to the Company was to accept the findings of the Commission's stock and bond expert, Mr. Fankhauser.

Exhibit 41, showing the total expenditures for renewals and additions and betterments for the next three
236 years shows "estimated operating charge, depreciation" with a total of $3,138,894. Mr. Harris, Mr. Crowe, Mr. Weeks and myself, who prepared that exhibit, concluded that almost all of this would be a proper charge [fol. 452-a13] to depreciation because these are large pieces of reconstruction. The Company's engineering department considers this amount the absolute minimum that they have to have. Mr. Harris, the chief engineer, was asked to prepare a statement and his statement I think was pretty nearly twice as high. The general manager said this is absolutely out of the question, we haven't money enough to do that and you have to cut that down. It was cut
237 down and this (Exhibit No. 41) is apparently the irreducible minimum. The theory adopted in estimating charges for replacement to the depreciation reserve is that only the original cost of the unit is charged to depreciation and not to replacement cost. If the original cost was $100,000 and to replace it today would cost $150,000, only $100,000 would be charged to depreciation. This expresses my view of depreciation charges throughout this proceeding. Regarding the handling of costs of removing property, the methods used by the Company were questioned by the Commission's engineers, and their decision of how this

matter should be handled has been adopted and their method has been used in my estimate.

426 With reference to Exhibit 62 and my estimates of curtailment of traffic under various rates of fare I feel very sure that almost any increase will produce a curtailment. I do not know of a single case, and I have been in a great many, where an increase in rates has not had, as an immediate result, a decrease in revenue and a decrease in paying riders. The lowest I have ever known has been in the neighborhood of 5%. I am quite influenced,

427 perhaps, by what has recently happened in Oakland where I estimated 7½% for the first half year and 5% for the second half year and, as a matter of fact, the curtailment was considerably greater. I do not think that would happen to that extent in Los Angeles because the increase is not so heavy; I think there is likely to be a

428 5% falling off in the first year. Later on that will be made good by increase in population. The estimates are based on present traffic, meaning the last 12

429 [fol. 452-a14] months, including the experience of the present year. Even if traffic declines as estimated there will be no decrease in operating expenses unless we curtail service. If we had a 5% or 7½% decrease in riders we could curtail service. But I, personally, would oppose that just as strongly as I could. I do not think that we ought to curtail service; I think we ought to increase service. When we made our estimate of probable curtailment we made a careful study between the different classes of riders and analyzed how we think the different classes of riders would be affected. This analysis includes rail and bus operations, including the motor transit lines, to

430 the extent of the 5¢ fares. The revenue figures include all buses but the calculations as to curtailment of traffic were made only on traffic that is affected by these proposed rate increases. The traffic on the 10¢ motor bus fares is not affected because the rates would remain as they are. There will be no natural increase in business to offset this assumed curtailment during the first year, because our experience right now with the 5¢ fare shows that there is no increase in business with the corresponding months of the previous year. I do not believe this condition will continue indefinitely, but I think we cannot expect much increase even

with the present fares, in 1927 over 1926. Later on I feel very sure our traffic will increase with the growth of the city, but so will our expenses.

[fol. 452-a15] B. W. CAMPBELL, a witness called on behalf of the Los Angeles Railway Corporation, testified as follows:

88 I am transportation engineer of the Company and have been in railway and street railway engineering work since about 1902. I have had experience in making surveys of street railway properties, including about ten years in the Engineering Department of the Railroad Commission. I have prepared Exhibit No. 23, showing the estimate of revenues from increased fares under various
89 assumed conditions. In this exhibit for rail traffic the experience of 1926 was taken as the basis for 1927; that is the 1926 fares of the various classes were rounded off to even numbers and the proposed rates apply to the various classes of traffic. As regards the cash fares, where an alternative is offered the passengers of 7¢ or 4 tokens for a quarter I have shown three bases for the estimated amount of revenue. The first item assumes 5% of the present revenue passengers may pay a cash fare of 7¢ and 95% will use the token fare. This will produce a gross revenue of $14,461,250. Using the basis of 10% revenue passengers paying a cash fare and 90% a token fare the gross revenue $14,547,500 will be produced. On the basis of 15% paying cash and 85% using tokens, the gross revenue of $14,633,750 will be earned. In order to provide an estimate for the actual results which may be produced by reason of curtailment in traffic due to increase in rates, I have shown a 5% and a 10% curtailment in total prospective revenue as produced by the various combinations of cash and token passengers.

[fol. 452-a16] The buses were estimated in conjunction with our earnings and allowed for the increased traffic which we figured on account of the new lines, and on account of the bus business increasing. Inasmuch as the greater part of the revenues is produced from the cash fares this class of

fares would be the controlling item. I believe that a
90 fair estimate will be 10 per cent of the revenue passengers paying a cash fare of 7¢ and 90 per cent using the token with curtailment in traffic somewhere between 5 and 10 per cent for the first year. The total revenue under that plan would be between $13,598,000 and $14,553,000.

I prepared an exhibit showing rates of fare in the principal cities in the United States (Exhibit 24). In brief it shows the changes in the rate of street car fare in all of the large cities of the country from 1917 to date. The information was compiled from a monthly bulletin issued by the American Electric Railway Association. The exhibit shows that the rate we propose in this proceeding is lower, with few exceptions, than other rates. The principal ex-
91 ceptions are New York City which has rather a unique condition in that there are thirteen different street railway companies serving the public and no transfers are issued between companies. The other principal exception is San Francisco where a part of the service is offered by the municipal railway with no transfers between companies. The length of haul is much shorter than the Los Angeles average haul and the mileage of both of the San Francisco systems is about one quarter less than Los Angeles.

Comparing Los Angeles with Chicago, there are two systems in Chicago. On the elevated in Chicago the present rate is 10¢ cash with three tickets for 25¢ and a weekly pass [fol. 452-a17] for $2, good under certain restrictions. On the surface lines the fare is 7¢ with 3 tickets for 20
92 cents. Philadelphia has an 8¢ cash fare with 2 tokens for 15¢, and a 3¢ transfer charge is also made at 126 transfer points, with 664 free transfer points.

I have also prepared an exhibit (No. 25) entitled "Average Rate of Fares in Cities in the United States". It shows the average rate of fare in 272 cities of over 25,000 population on the basis of the 1920 census, and shows an upward trend from December 31, 1917 when the average fare was 5.0727 cents to December 1, 1926, which is also the peak, when the average fare is 7.7423 cents. This is a considerably higher average rate of fare than we are asking in this proceeding. Our aperage will probably be about 6.5 cents.

Comparing the service rendered by the Los Angeles Railway Corporation with that of cities I am familiar with, the

Los Angeles service, I think, is better than, compared for instance with San Francisco, Oakland, Portland, Oregon, and Honolulu. I am familiar with those cities.

93 I have no actual data on the proportion of tokens lost, although I know in Honolulu there were some proportion of tokens lost but the effect on revenue was inconsiderable.

[fol. 452-a18] DELOS F. WILCOX, a witness called on behalf of the City of Los Angeles, testified as follows:

285 I am engaged in consulting work in the public utility field, valuation, rate-making, franchises, public policy.

287 I have been employed by the City of Los Angeles in this case and as a result of that employment have made some investigation into the history of this case and also of the Company itself. I have gone over the transcript up to this time and examined all of the exhibits and also made a personal inspection of the property

288 of the Company so far as was possible within the short time that I have been here. I have made a report or memorandum (Exhibit No. 53).

312 I agree very heartily with Mr. Sachse on the theory that depreciation should be treated absolutely the same in the valuation and in the operating expenses. I believe in the straight line method as the simplest and the most used all around, and now I think it has the greatest amount of authority.

313 I have referred to the rate of return here and because of the fact that the street railway business here and elsewhere is not in a very good condition, because of the great difficulties that have arisen in the last ten or twelve years by reason of high costs on the one hand and the extraordinary competition of the automobiles on the other, it is hardly appropriate that it should be allowed or count upon what might perhaps be a reasonable rate of return in a utility which can easily attain it. I think that 7 per cent would be ample and I find that as a matter of record already in the case the Company has been paying 5 per cent on its bonds, when it had the money to pay and five and 6 per cent on its notes, and that it has an applica-

tion before this Commission now which involves the sale of $30,000,000 of bonds for reorganization purposes at 5½ [fol. 452-a19] per cent at 90, which would mean a yield of about 6 per cent, a little bit over, and for those reasons, and because the rate of return on money is not anything like it was during the peak of the war and post-war period, we are getting more nearly back to the normal conditions before the war, it seems to me that 7 per cent is ample.

Figured on the $31,000,000 as a rate base and 7 per cent return, the Company would be entitled to $2,170,000 a year as a gross income available for return upon its investment.

315 Assuming no additional revenue were derived from the abolition of free riding and the further development of advertising revenue and that no decrease in operating expenses were possible, then, based on the gross income which the Company had last year, it would need $886,402 more income than it then had to meet the requirements, which I have admitted. If its revenues are increased, its taxes will be increased on gross earnings and in proportion to the increase in revenues, and if its net income is increased, its Federal income tax will be increased. I have made a rough computation which leads to the result that in order to get a net addition of $886,402, the gross addition to revenue would have to be a little in excess of $1,000,000.

My estimate is that the Company is entitled to a million dollars more, if it can't get it in these other ways, that is, in some way or other it is entitled to about a million dollars increase.

I have considered this matter of bus operation.

318 Separate bus operation shows, as the record shows, severe losses and as far as my information goes, that is very much the same record that is being made everywhere where busses are operated in connection with street railways, and it raises in my mind a very serious doubt about the propriety of the policy of going very deeply into bus [fol. 452-a20] extensions as a substitute for street railway extensions. Normally, if the busses are necessary and they are operated by the street railway or in connection with it, the entire system would stand together, but it is not proper that the bus business should be extended blindly on the

theory that the street railway fare can be increased to carry it, but I have not reached any further definite conclusion that I wish to express on that subject today.

I have said a good many times, and might have said it now, that one fortunate result of a fare increase is that business falls away. I think that is true, but it is not true to the extent that it was some time ago. Your situation here is peculiar in some respects. The country at large has become used to fare increases. The spirit of spending is different from what it was when the question of fare increases first came up, and I think the competition of automobiles has gone far enough so that you are drained pretty nearly as dry as you can be from that point of view, and the 6 cent fare is an increase of only a penny. I thought that over quite carefully and I would not look for any decrease in traffic that you could measure now and predicate as probable. There might be, probably would be, a very slight decrease resulting from this fare. The more the increase, of course the greater the effect, but so far as I know the change from a 5 cent fare to a 6 cent fare has not had very much effect. It is usually where the jump is bigger than that that the traffic begins to fall off as a result of it.

332 Comparing the value of service of the Los Angeles Railway with the value of similar service in the United States or elsewhere, I will say this. I think the Los Angeles Railway System is a good system, reasonably well maintained. It might be maintained a little better, perhaps, if you had a little more money; that the service [fol. 452-a21] is better than it is in a great many places, and the length of ride, the apparent length of ride—of course, I don't know the actual length of ride—the apparent length of ride is greater than in most cities. I am not going to make any sweeping statement to the effect that this system or any other is superior in that respect, or in these respects, to any other in the world, but I am perfectly frank and willing to admit that this system serves the city well, within the limitations of its being incomplete. Of course, you don't have an entire service to render, and, second, the city has spread out, you haven't had many extensions for quite a while, so the service is limited in that way.

Taking the operating income for 1926 as per Exhibit 35 as $1,281,598, deducting from that the—this allowable in-

crease in the annual depreciation, leaves $1,193,279 without fare adjustments. Then deducting from that, further, the additional bus losses which the Company estimates, which

344 there is no particular detailed basis for that I can find but which must follow as a result of expansion of the bus program, without contesting that for the immediate purpose, with the operating income available for return would be reduced to $1,137,687, that is, making the adjustment that I referred to on other operating expense accounts, I reached the conclusion that a fair estimate for the immediate purpose, pending a very detailed examination of the Company's income available for return for a year beginning now on the present rate of fare would be approximately $1,340,000, which contrasts with the—roughly with the $970,083 found on Company's Exhibit 45-A.

I estimated that a straight 6-cent fare, as asked in the Company's emergency application, would produce $2,400,000 gross additional revenue; I have not seen any reason [fol. 452-a22] for modifying that estimate. Of course, no estimate can be exact, but I think it would be very close to that. Now, following the adjustment of income which I have just been testifying to with an allowance of $2,170,000 as the gross income required on the basis of a 7 per cent return on the old base which I suggested of $31,000,000, the Company would need a net increase of about $830,000 or $840,000 per annum in its gross income. But with the adjustments for an increase in the franchise tax and the state gross earnings tax and the Federal income tax I figure that this—to yield that amount net—gross increase in revenue of approximately $965,000 somewhere around a million dollars would be required and that compares with $2,400,000 which I think the straight 6-cent fare would yield.

I think an increase around $1,000,000 is as large an increase as should be given them as an emergency proposition.

387 In my statement that the street railway business is not highly prosperous at the present time and cannot expect to earn as liberal a rate of return as some other utilities, I had in mind that the electric light business particularly, and probably the telephone business are in a position to earn a much higher return. That is they are enabled

to earn a much higher return if they are allowed rates to earn it, than the street railway business and the street railway business runs up against the economic limit where if rates are too high the revenue is not increased. Gas utilities are more dubious; under certain conditions water utilities would be included. It depends upon the situation.

What the return will be of course depends upon the
388 rates. But it also depends upon the use; the two things the rates and the use. You raise rates and decrease the use, you may go beyond the economic limit. I would say that by no means is the 5¢ fare the eco-
389 [fol. 452-a23] nomic limit. 6¢ is perhaps not the economic limit and 7¢ is probably not. These answers I think relate to the immediate future. My view of the whole situation is, in the street railway business, that the more you increase the fare beyond a very small amount by reason of having reduced traffic, increasing it again in order to meet that reducing traffic, that in the long run the economic limit is lower than what will appear as the first-off result.

390 On the question of rate of return I agree that the element of risk that surrounds the public utility is an important consideration, but it works against itself because the more you recognize it the less you are able to earn the return that you set set out to earn. In a business where its risk, as in the street railway business here, is not large, I think the risk is not large—I would say that the company woult get along better in the future, financially, if it did not contend and the Commission did not allow any substantial amount for extra risk as compared with other utilities.

All I say is that I do not think the risk in the street railway business here in Los Angeles, under the conditions that exist, assuming that a fair valuation and fair rate decisions are rendered by the Commission, or that the company takes advantage of its rights under the law if the Commission is derelict, I do not think that the risk is large.

As compared with the telephone business I think the risk on the street railway business in Los Angeles is
391 probably somewhat larger. As compared with the electric power business it is probably somewhat larger, that is for the immediate future. You have the advantage that you have been able to develop your trans-

portation system to an unlimited extent without dependence upon far away resources to any great extent, which in the power business, is not quite so because of the lack of hydroelectric power.

[fol. 452-a24] I do not commit myself to what the rate of return should be for one utility, but I do commit myself to this, I have no doubt at all that the Commission can grant a rate which will yield you a 7% return upon the valuation which I have set up here, and that if it does your return will be sufficient to get the necessary capital to carry on the business successfully. I do not say I would under the same circumstances make the return for the telephone and power utilities say 1 per cent higher. I said that they could earn it. If you want to be liberal, why, you can give it to them. This is no case for liberality in the street railway business.

[fol. 452-a25] T. D. HUGHES, a witness called on behalf of the California Railroad Commission, testified as follows:

254 I am special accountant of the Railroad Commission and have been so employed for about eleven years. I have made an examination of the accounting records of the Los Angeles Railway Corporation and examined the books from December 1, 1913 to December 31,
255 1926, and as a result made a report (Exhibit 49). One of the main objects was to ascertain the profit earned from the operation of the properties for the twelve years since December 31, 1926. During that time the gross additions and betterments amount to $23,841,758, and the retired property $5,362,964. I might say that the retired property might not be the entire amount. That was the amount charged to the depreciation reserve. To have ascertained the exact amount of retired property would have entailed a very great deal of work and I am satisfied that fully ninety per cent of retired property was charged against the reserve, so this is a fairly accurate figure.
256 Some of the retirements made have been charged against surplus.

I also made an examination of the operating revenue and expense account. I took out the entire earnings and expenses for the twelve years since December 31, 1923. The

whole story is on Exhibit D-1 of Exhibit 49. On the third line from the bottom is the profit which the Company has earned available for return on investment. Those figures are subject to the reasonableness of the depreciation.

257 On the next line is shown investment at the close of each year, and on the last line is the rate of return which the Company has earned on that investment for each of the years. One matter to which I can refer is the increase in the operating expenses and especially in the last two or three years. I have made a calculation of the per cent of expenses to the revenue for five years starting with 1922. Maintenance of way and structures in 1922 was 4½ [fol. 452-a26] per cent of the total revenue. In 1926 it was 6.8 per cent. The maintenance and equipment has risen even more. In 1922 it was 4.7 per cent. In 1926 it was 9.9 per cent. The other expenses have gone up slightly, but in total it will be seen that during 1922 the total operating expenses absorbed 75.90 per cent of every $100 of revenue, whereas in 1926 $89.40 was absorbed. I didn't look into those figures, as that matter has been looked into by the engineering department of the Commission. I just point the figures out.

[fol. 452-a27] TESTIMONY BEFORE THE RAILROAD COMMISSION, IN NARRATIVE FORM

From Affidavit of H. G. Mathewson

Portions of Transcript Before the Railroad Commission

JOHN E. COOPER, a witness called on behalf of the Railroad Commission, testified as follows:

271 I am assistant engineer with the transportation division of the engineering department of the Commission, and have been practically all the time in the transportation division since my employment with the

272 Commission in 1919.

I have a very good knowledge of the general sys-

278 tem of the Los Angeles Railway and have been familiar with the property in the neighborhood of five years and very intimately familiar in the last three years.

I was in charge to some extent of the operating studies that were made in connection with the joint street railway survey. I also have had experience with nearly all other
279 street railway properties in the State of California.

With reference to the physical condition of the property and its unkeep as far as maintenance is concerned, the condition of this property compares quite favorably, I think, with probably any street railway in the state. With reference to the general service that the Company gives to the public of Los Angeles and the other communities it serves, having in mind some of the essential elements of service, that is, the average length of haul, the total length of lines, the frequency of service, the speed of the service, the fact of half rates for school children, I would say that with the possible exception, maybe, of the Market Street Railway, which is probably the only railway that compares with the Los Angeles Railway, so far as finances are concerned, those two railroads are probably better off than any
441 two railroads in the state and I think are giving probably a little better service than any other railroad.

[fol. 452-a28] I have made a study of the operating conditions of the Los Angeles Railway and prepared a report (Exhibit 63). The scope of my report has been limited to the study of the financial results of operation and I have included in that estimate of the return, revenues and expenses that might be expected for the year 1927. This estimate has been based largely on the service as rendered at the end of 1926, including the changes in service
443 that have been made, subsequent to that time. On page 15, Exhibit 63, I have shown the net income and approximate return by years. In figuring these net returns I have used as a basis the historical reproduction cost, the amount for the different years being shown in the
447 column entitled "historical reproduction cost." I have shown the amounts taken from the Company's records to indicate what the return would be on that basis, the straight line depreciation having been used by the Company in their accounting.

In the next column is the net income that would have been received had the Company used the five per cent sinking fund annuity method, and in the last column is the rate of return that would have been obtained had that method been used by the Company.

On page 16 (Exhibit 63) is the table showing the financial results from the operation for the years 1921 to 1926.

These figures are the system figures including all operations of the Los Angeles Railway Corporation, including motor buses.

[fol. 453] TESTIMONY BEFORE THE RAILROAD COMMISSION, IN NARRATIVE FORM

Transcript Before the Railroad Commission

Affidavit of H. G. Mathewson

J. E. COOPER, a witness called on behalf of the Railroad Commission, testified as follows:

447 In my figures for the Los Angeles Railway System (Exhibit 63) I include all operations of this com-
448 pany, including busses, but I have divided the system as shown by the table on pages 15, 19 and 20 for the years 1923 to 1926 to show railway operations of the Los Angeles Railway bus and the Los Angeles Motor bus. In 1923 the Los Angeles Railway bus operations showed losses as detailed on the exhibit.

449 The Los Angeles Motor Bus Company's figures represent only the Los Angeles Railway's portion of that portion of that system (it being jointly owned with the Pacific Electric Railway Company). The split on practically all operations is made on a 50/50 basis, although not on all. The final figure is close to 50 per cent. Mileage for busses is also shown on this page of this exhibit, and the results from operations shown on pages 19 and 20 are the Los Angeles Railway's portion of the results. These statements of results of operation show that the revenues of this company as a whole increased for a number of years up to approximately 1924, when they flattened out to a practically level curve. Operating expenses have, however, continued to increase to and including 1926. Much of the increase in operating expenses have been due to bus operations which began in 1923, and have increased both in [fol. 454] number of busses and in bus miles very rapidly, the bus expenses having therefore increased rapidly. There has been some increase in cost of operation on the

[fol. 455] A. G. MOTT, a witness called on behalf of the Railroad Commission, testified as follows:

A. G. Mott, chief engineer of the California Railroad Commission called on behalf of the Commission, was sworn; a statement of his qualifications was waived by all parties and he testified as follows:

470 I have prepared a report (Exhibit 64) dealing with what might be expected as to gross revenue of the Los Angeles Railway Company if any one of eight different fare plans were placed in effect. These plans include (1) a six cent straight cash fare; (2) a six cent cash fare with nine tokens for fifty cents; (3) a seven cent cash fare with ten tokens for fifty cents; (4) a seven cent cash fare with nine tokens for fifty cents; (5) a seven cent cash fare with four tokens for twenty-five cents; (6) a ten cent cash fare with ten tokens for fifty cents; (7) a ten cent cash fare with nine tokens for fifty cents; and (8) a five cent zone fare. My report also deals with economies that may be effected by applying the principle of one-man operation under (1) one-man operation outside the congested area (including (a) two-man operation in congested area all hours and (b) two man operation in that area part time only) and (2) one-man operation over the entire system with ground conductors at all times in congested areas.

471 The exhibits that have been heretofore introduced by Valuation Engineer Dufour and Assistant Engineer Cooper indicate the estimated financial results of operation under three set-ups which I have indicated in the table (Exhibit 64). The set-ups were explained rather fully by Mr. Cooper this morning and these are merely summary statements of what are in his exhibit (Exhibit 63). I think they need not be read fully again except to state that, based upon historical reproduction cost valuation and with operating expenses stated on a .5 per cent sinking fund basis, the Company would earn a return of 4.9 per cent; and in order to earn a return of 6 [fol. 455-a1] per cent on that basis would require an increased gross revenue of $715,840. In order to earn a 7 per cent return, calculated in the same manner, would require an increased revenue of $1,227,245, and in order to earn an 8 per cent return $1,738,650. Based on a rate base

determined by the historical reproduction cost less depreciation and setting up operating expenses on the straight line method of depreciation, the return would be 4.8 per cent, and the amount necessary to earn a 6 per cent return, $502,820; a 7 per cent return, $882,437; and an 8 per cent return, $1,262,052. Based upon the reproduction cost new less depreciation valuation for a rate base and a straight line method of calculating depreciation in operating expenses, the return would be 2.8 per cent, and the increase in gross revenue necessary to earn a 6 per cent return would be $1,414,982; to net a 7 per cent return, $1,870,596; and to net an 8 per cent return, $2,326,211.

The method indicated by the first calculation which I read is the method which has been most frequently used by the Commission in testing the reasonableness of rates. The method shown in the second column is a method advocated by the City as indicated by Dr. Wilcox's testi-
472 mony in Exhibit 53, page 28. The third method is a method apparently favored by the Company as indicated by Mr. Sachse's report, Exhibit No. 20, page 36. At the conclusion of Mr. Cooper's report on financial operations it is shown that under each of the three plans of calculation, the Company failed to earn as much as 7 per cent by the following sums: under the first plan, $1,227,245; under the second plan, $882,437; and under the third plan, $1,870,596. For the purposes of comparison of the various proposals which I will hereafter describe the first amount has been used as indicative of the present reasonable requirements of the Company.

In estimating horizontal results or flat-fare increases, I [fol. 455-a2] assume such increases would be effective for each of the present five-cent fare zones. Many of the present zone limits have no important bearing on revenue and the result is to limit use of service on such lines, although from the Company's point of view zone limits have been intended to maintain maximum limit of haul principles
[fol. 456] under five-cent fare. Under proposals of
476 company for seven-cent cash fare with four tokens for twenty-five cents, it is my judgment that there would be a six per cent loss in traffic with an eighty per

cent use of tokens by cash riders. This would result in increasing the revenue by $2,454,000. Even under lowest estimates this form of fare would result in increas-
478 ingly liberal return. I believe that multiple coin fares are subject to general objection, the introduction of pennies adding to public confusion and inconvenience. Also, in heavy traffic, conductors find it impossible to check accurately whether correct fare has been deposited. Moreover, in most cities which do not have single coin fare, subsequent revenues have diminished continuously, so that results of operation have been nearly as unsatisfactory at higher fares as on the five-cent fare. Perhaps there is no logical stopping point between a five-cent and a ten-cent fare. I believe that there is an underlying and fundamental advantage in a single-coin fare, and therefore consideration should be had to such forms of
479 fare as will retain this idea. This can be done either by establishing a ten-cent fare in combination with tokens or a zone fare. As to the ten-cent fare cash with ten tokens for fifty cents, I believe there would be an increased net revenue of $977,000 with a 6½ per cent return. This would be a 100 per cent increase to casual riders, and there is much uncertainty as to what it might produce. A ten-cent cash fare with nine tokens for fifty cents is not in effect in any other important city. I believe such a fare would probably result in an increase in revenue of $1,836,000. With reference to zone fares as contrasted with horizontal increases in fares, I am convinced, after careful study, that there would be a decided advantage to the pub-
[fol. 457] lic and the company if the latter's reasonable financial requirements be met by some form of rate retaining the basic five-cent fare. The present fare produces inadequate revenue, and the above can only be done by some form of a zone system. Zone fares have been in effect in Los Angeles for many years without particular dissatisfaction and additional zones have been es-
481 tablished by the company in bus operations. The zone fare grades the fare in relation to the total haul. One of the most logical objections refers to the fact that outlying sections are already penalized by the time element of transportation, and that an additional money cost added to this disadvantage eliminates outlying district expansion.

Long hauls, however, cost more than short hauls, and if a zone system could be devised, not disturbing the five-cent fare, between the business district and the residential sections, but arranged in some manner to meter the service in proportion to the length of haul, most objections to zone fares would be met and most advantages would be obtained. This can be done in Los Angeles by installing a central neutral zone area. Under this plan five cents would be charged between the down-town business section and all other points within the present five-cent zone area, with full transfer privileges; but an additional five-cent fare would be charged such passengers as actually ride through the down-town section and out again on the far side; thus all riders traveling to or from the down-town section or intermediate points would have no fare increase, but through passengers going on beyond the down-town zone would pay
two fares. Such persons receive nearly double the
482 service of other passengers, and the amount of increased revenue produced would depend, first, on the extent of the central neutral zone, and second, upon the loss of profits from riders whose fares are increased. No de-
[fol. 458] crease in travel using a five-cent fare would be expected. In 1923 a check was made in Los Angeles, which accurately forecasts the result of estimates of such a zone system. If a neutral zone were established bounded by Figueroa, First, San Pedro and Pico Streets, 18 per cent of the total passengers would actually pass through the two sides of the zone. If there were no deflections in such travel because of a second fare, there would be thus no increase in fare to 82 per cent, and 100 per cent increase to 18 per cent of the riders with an increase in revenue of $2,150,000. If there were a 20 per cent of deflection of travel of riders having their fare increased, the increase in revenue would be $1,720,000. I believe there would be approximately ten per cent decrease in travel on the part
of such passengers resulting in $1,935,000 increase
483 in revenue. If this is too great a return, the inner zone limits could be expanded by making these limits at Macy, Sunset, Alvarado, Washington and the Los Angeles River,—the estimate resulting in an increased revenue of approximately $1,200,000 with ten per cent deflection of travel. If there were a twenty per cent deflection there

would be an increase in revenue of $960,000. I believe deflection with such a larger inner zone would be about five per cent of through passengers, and would result in an increased revenue of $1,140,000.

Regarding the matter of economies in operation, the real relief desired by the company is an increase in amount available for return. The above discussion has been based on assumption that this could be obtained only by increasing gross revenue. I have considered, however, the possibility of increased net available return by decreasing operating expenses, retaining sufficiently good service to serve the people satisfactorily. Platform labor constitutes the major item of expense in street car operation, being 37 per cent of total operating expense on this *on this* com-
[fol. 459] pany's system, excluding depreciation. Some saving in this item would be the most effective means
484 of producing the above result. If the principle of one-man operation could be effectively applied in Los Angeles large savings in operating costs would result. Two such plans are offered: First, one-man-two-man car operations. The real objection to one-man operation in Los Angeles is the central congested traffic condition, which is a serious matter to the general traffic situation. There is no such objection in the outlying section, nor in the downtown section after the peak of traffic is past. By providing two-men operations for the congested territory only during all hours, and one-man operation outside such area, an estimated reduction operating expense of approximately $1,030,000 would be effected, and if completed one-man operations were used after 7:00 p. m. in all areas, the result in saving would be approximately $1,173,000. Some remodeling of cars would be necessary for such one-man-two-man operation. This company's cars have been pointed out by the engineering department of the Commission as not being the most satisfactory type of any operation.
485 If converted to one-man cars, they would not be as satisfactory as properly designed cars, but need not be scrapped wholesale. Such operation could be put into effect if 988 cars were converted for one-man operation at a cost of approximately $1,500,000. This would result in increased interest and depreciation charges of approximately $170,000 with a net increase to the company in

amount available for return after allowing for additional Federal income tax, of $748,000 under the first plan, and $868,000 under the second plan. These proposals present some operating difficulties, necessitating a superimposed schedule of men within the congested area and possibly serious delay through that area because a man arriving on some [fol. 460] other car might not be available for his scheduled car. These admitted difficulties are not sufficient to condemn the plan, but I have looked for a plan which would maintain advantages but eliminate these objections. I suggest the following plan:

One-man operation, with ground loaders at congested points.

In analyzing one-man operation I have considered the basic duties of each man on the care under present conditions.

486 The motorman's duties occupy him largely when the car is in motion with little to do when it is at rest. The conductor is busiest when the car is at rest or just starting. Both are working to capacity only during the passing of the congested area in heavy travelled areas. A substitute for the conductor in this way would actually facilitate traffic and would be more satisfactory. Loaders or ground conductors at important loading points offer such a substitute and a 100% one-man operation could be inaugurated with loading actually facilitated in down town congested areas, both ends of the car being utilized at once for loading, thus facilitating movement and aiding safety. Under such concurrent loading the total loading time could be reduced 30% over the present system, making possible speeding up of schedules during peak hours in down-town sections. In outlying areas without loaders one-man operation would slightly slow down schedules, the sum total affect on schedules probably being negligible but real relief being accomplished where traffic relief is most needed.

184 ground loaders from 7 a. m. to 4 p. m., 274 from 4 p. m. to 7 p. m and 184 from 7 p. m. would be necessary with a net reduction in labor costs of approximately $1,000,- [fol. 461] 000.00 and the same equipment changes as under the one-man, two-man operation. This would result in a net saving of $723,000.00.

The central neutral zone system could also be introduced together with these one-man car proposals and, by a combination of both, the net earnings of the Company can certainly be increased with the basic 5-cent fare retained, to a point where the Company can adequately meet its financial requirements in connection with the increase in transportation needs of Los Angeles. Such a combination of the larger neutral zone area and one-man operation with ground loaders would return 8.3 per cent and keep the 5-cent fare.

Cross-examination:

494 With reference to my use of 7 per cent as the rate of return, I will say frankly that I do not believe a fair return for a street railway property should be less than 6 per cent. I do not believe a fair return would be greater than 8 per cent. I took a middle figure merely to avoid the extent of duplication of many figures. Other things being equal, I see no reason why a fair return for a street railway company should be different from a fair return for any other company.

497 On the question of possible fares, first I will say that I am fundamentally in favor of the 5-cent fare. I think a zone has certain objections, but it is less objectionable than a departure from the basic 5-cent fare. As far as possible, certainly any reasonable discrimination should be avoided and a fair collection scheme, both
498 from the standpoint of the Company and also of the public, should be adopted. That is comparatively simple; the simpler the better. If there must be a difference as to kinds of riders, it is less of a hardship and less against the public interest for the casual rider to pay a higher fare than it is for the regular rider. If it is necessary to increase the fare at all, it is my opinion that it is more in the public interest and fairer that the benefit [fol. 461-a1] of the lowest possible increase should be given the regular rider and that the occasional rider
499 should be a little bit heavier taxed than the regular rider. The zone system I have suggested in principle accomplishes that object.

The check in 1923 disclosed that most of the regular riding public had its origin on the same line and not beyond

the same side of town. I have concluded that the regular riders predominantly so ride and that cross-town traffic is predominantly casual. Therefore, my inner neutral zone system places the major portion of increased burden upon the casual rider.

500 It is not the purpose of fare increases to change the character of the city, but the advantage or disadvantage of other factors than revenue must be weighed against those of the increase itself. There is no serious disturbance in City conditions involved in my suggested inner neutral zone system, it involves very slight disturbance. Moreover, a 20 per cent increase in rate of fare to all riders is not a slight increase.

501 The public would be better off in producing necessary revenue by my suggested zone system and a basic 5-cent fare than under the 20 per cent increase to all riders.

502 With my inner neutral zone plan, if the passenger entered in the outer zone he would pay 5 cents. The man who crossed the inner zone line twice would pay 10 cents, and if the smaller zone, which I mentioned, were used, the additional revenue produced would be far more than present requirements of the Company.

503 I estimate that this plan would affect 10 per cent of the passengers whose fares are disturbed. It is desirable from the City's point of view to keep traffic out of the heart of the City that has no business there and from the Company's point of view also, since in that area the Company's facilities are most limited and their use is greatest.

[fol. 461-a2] I know of no system anywhere where my proposed plan of inner and outer zones exists as here
504 suggested. I do not consider that a valid objection to the plan though.

505 The one-man, two-man operating estimate was based on an actual working out of schedules on three of the lines, applying the same ratio to the whole system. The ground loader estimate was based on an estimate based on the actual allocation of loaders to specific points where we thought the traffic justified them.

507 Most cities have not had the consistent growth in population that Los Angeles has, so I do not think it

would be fair to say that I have taken into consideration probable growth in population in Los Angeles.

511 During the peak hours, when regular riders constitute the bulk of the passengers, destinations and origins are shown by our check to be on the same line which indicates that even under the flat fare system the population has distributed itself so as to have the most convenient transportation, although there is no differential in cost. I am, therefore, convinced, that through riding is of itself inconvenient, regardless of price and consists largely of casual riders. I know of no way to ascertain exact percentages.

512 One-man car operation has not been abandoned so far as I know in any city in which it has been tried. It has become almost the universal practice in the major eastern cities, excepting New York, Chicago or Philadelphia, including Newark, New Jersey, where the population served is in excess of 1,000,000. Here there is complete one-man operation without any two-man cars. Buffalo has one-man operation, as I recall.

513 In Newark where there is no assistance from a second man, the traffic in congested areas is markedly slowed down and the service is therefore injured. Aside from this the system works satisfactorily in

515 Newark.

I believe the one-man, two-man system would materially

(Copy does not connect.)

[fol. 462] the inner zone twice would pay 10¢, and if the smaller zone which I mentioned were used the additional revenue produced would be far more than present requirements of the company.

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(Copy does not connect.)

[fol. 463] speed up the movement of traffic in congested areas. The total car hours necessary would be about equal to the present total car hours. I think it is vital not to slow up schedules down-town. It is a vital thing for the Company to make every effort to speed up schedules.

517 My thought about the possibility of a general substitution of buses for street railways, to answer that very bluntly is that the bus has, in my opinion, a very limited field of economic usefulness in city transportation. It has a field but it is very decidedly limited. The bus, in general, is limited to a territory where because of some peculiar traffic characteristic it is undesirable to introduce a rail line and yet public transportation must be furnished; there are such situations. The other situation is where a territory is developing and no real certainty can be had that it ever will demand public transportation, but the experiment is to be made to see whether there are possibil-

ities there or not. And for the purposes of conducting that experiment without incurring large investments the bus has a real use. But for the primary routes of mass transportation I do not think the bus can successfully and economically compete with the rail lines.

H. G. WEEKS, a witness called on behalf of the Los Angeles Railway Corporation, testified as follows:

81 I am assistant to the general manager of the Los Angeles Railway Corporation and have charge of or supervision of bus operation.

82 The Los Angeles Motor Bus Company referred to in Exhibit 21 is not a corporation nor a partnership. It is a fictitious name of buses operated by two companies, that is, by the Los Angeles Railway and by the Pacific Electric Railway, each company having a joint interest in the capital investment and in the operations, that is, where there is a loss, each company assumes half of the loss. The [fol. 463-a1] mileage operated by the Los Angeles Motor Bus Company in 1926 did not vary very much. So we took as a basis for 1927 an increase in revenue of about 10 per cent over 1926. The operating expenses were pro-rated in about the same way with the results shown at the bottom of Exhibit No. 21. That is as close an estimate as I know how to make of what the earnings or loss would be on those bus operations for 1927. The Los Angeles Railway Corporation has buses that it operates itself and in which the Pacific Electric has no interest and, with respect to those buses, I have of course estimated the entire income

83 and the entire expenses. But with respect to the buses of the Los Angeles Motor Bus Company we will have an income and we will have the expenses, half of the income and half of the expenses to the Los Angeles Railway Corporation.

664 The zone system proposed by Witness Mott in Exhibit 64 seems to be impractical. It would cause confusion to the public, slow up schedules, be the cause of complaint arising from possible disputes and misunderstandings. The only method of operation which appears ossible where passengers originate outside of the inner

zone would be to give passengers boarding cars in the inner zone a hat check and when the cars proceed out into the second zone again those having hat checks would leave without paying additional fare, and those without would be those who had ridden through the inner zone.

666 This would require hat checking all passengers boarding within the inner zone, about 60% of the total. We carry approximately 1,000,000 passengers a day, making some 300,000 a day to be hat checked or about 60,000,000 hat checks a year. Compared to the present issuance of 90,000,000 transfers our present second and third zones would become third and fourth zones and still another form of hat check would be necessary to take care of passengers entering or leaving the cars in those zones. I understand this proposal is for a 5¢ fare in each zone. Our understanding is that this will not be satisfactory to [fol. 464] the public and we would not like to see such a plan introduced. It would be difficult to handle the passengers in rush hours.

667 Mr. Mott's figure of 18% passing through the central zone would be reduced when considering all day haul. The movement through the down-town district is greatest during rush hours. I believe 12% rather than 18% is the proper amount.

668 This would mean $1,380,000 increased gross revenue as compared with Mr. Mott's $2,150,000. I am apprehensive that deflection of travel would be greater than 10% but I have not made any estimate, but assuming Mr. Mott's estimate, the figure would be $1,242,000 instead of $1,935,000. This is increased gross revenue.

669 In Exhibit 64, page 15, reduction of operating expenses is estimated at $1,030,000. We have made a study (Exhibit 68) of this plan, and find about $101,863 saving, not including carrying charges on cost of conversion of cars to one-man cars. This would be $170,000 to be deducted from the $101,863, therefore, we conclude there would be a loss under this plan. This refers to one-man car operation outside and two-man operation inside the congested districts all day long under Plan 1-A of Exhibit 64. Under Plan 1-B, the same except one-man operation after 7:00 p. m. Our study (Exhibit 68) shows $147,488 against $1,173,000 both before deducting the carrying

charges on the conversion of cars with no saving
670 under that plan. The $170,000 carrying charge being deducted from the $147,488 resulting in a loss instead of a saving, according to my idea. Under the third plan, i. e. one-man operation during all hours with ground loaders where necessary (bottom of page 17, Exhibit 64), Mr. Mott estimated $1,000,000 saving. We estimate (Exhibit
671 68) $731,639, or deducting the $170,000 conversion item, our figures indicate a saving of some $560,000. [fol. 465] We believe it would take eight months to a year to make this conversion to one-man cars, and we fear results to our revenue during that period. Our opinion is, one-man operations would not generally be satisfactory in this size city considering traffic conditions and heavy loading of cars. I would not say it could not be done, but we feel it would slow up service with considerable deflec-
672 tion of travel and dissatisfaction with speed of cars. Mr. Mott's objection to multiple coin fares would disappear if the token fare is used, and we believe 80 to 90 per cent would use that fare. The multiple fare
673 would be less objectionable to the traveling public than the zone system, as proposed in Exhibit 64. A combination of one-man operation with a neutral inner zone would combine all the undesirable features of both propositions. We think even less of this than of the other plan, and if the universal transfer were superimposed on both, it would be even more objectionable and difficult to work out satisfactorily, particularly in collecting fares.

Cross-examination:

I believe most of the people who would go entirely through the inner zone would do so during rush hours, there being light industrial districts to the east and north of this proposed zone. People working in such districts travel during rush hours. I do not believe all the industrial population would move through this zone, which includes just 18 per cent of total riders, but these light industrial sections [fol. 466] immediately adjoining the zone and my judgment is based on the idea that people employed in industries travel during rush hours. They would not necessarily travel through this zone unless they came from the west or south portions of the city. Anyone living in the southern,

southeastern, east or northeast or north sections could go to employment without passing through the zone. The casual rider rides in both peak and off-peak hours, the regular rider during peak hours, but I have no check on movements of casual riders. I know of no estimate showing that the 18 per cent could ride more during the peak than in off-
677 peak hours. I figured 12 per cent instead of 18 per cent passing through the inner neutral zone, this being a mathematical conclusion arrived at by using five per cent passing through that zone in off-peak hours. This five per cent was a matter of judgment based on the considerations I mentioned of the existence of light industrial districts to the east and north of the central zone. It was an arbitrary figure on which the calculation was based. I am familiar with, and realize that the check which showed the 18 per cent was a careful check made under joint supervision of the Commission, the Company and the City Board of Public Utilities. I still used this 18 per cent for the rush hours, during which the check was taken, but I changed the figures without further check with reference to hours
678 other than peak hours. I believe casual riders spread themselves generally through the day. A casual rider here meaning one who would pass through the inner zone, but not being a regular rider into or out of it, i. e., the question is where he rides, and not when he rides, so I consider only those passengers who go into or through the central zone—not the passenger going from the inner zone to the outer zone whose travel will perhaps not be changed [fol. 467] at all. If a rider passes through the inner zone regularly he would be a regular rider if he did it during the rush hours, but under my definition, if he did it at noon every day he would be a casual rider.

679 Issuing 90 million transfers has not been an insurmountable problem for the company; but if 30 per cent asked for transfers and the same per cent had to be hat checked, it would be necessary to issue two pieces of paper to them instead of one. The only alternatives that I see have worse objections. One such alternative would be to stop a car at the limits of the neutral zone and collect new fares at that point. That would delay traffic. Another alternative would be to have the passenger declare that he wanted a 10-cent ride and issue him a ticket. I have no

other plan in mind at this time. The difference in amount of revenue that the zone plan would produce under my theory is based primarily on my use of 12 per cent for riders instead of 18 per cent—a purely arithmetical conclusion. I believe the company would have to meet demands for more service around this district in the way of detour lines not reaching the down-town district if the plan
681 were put into effect. I am not prepared to substantiate the basic figures in Exhibit 68 dealing with our estimates of losses under these plans. I merely combined the basic figures and put them into this table (68). I think another witness should testify as to the number of ground loaders we estimated would be needed for one-man operation.

Redirect examination:

Three of us worked together to arrive at the conclusions I expressed, another man making the summary, which is Exhibit 68.

683 [fol. 468] At the present time under our present arrangement of fare collections and transfers our company's conductors have to be familiar with about 80 forms of paper or transfers or other forms of trans-
684 portation in addition to the nickel. Of some of these there would be very few presented, but under the proposed universal transfer of the Pacific Electric Railway Company, the minimum additional number of pieces of paper or transfers that would have to be issued to our conductors would be 4. However, of the 80 forms of paper or transfers or other forms of transportation I have spoken of, there are in the neighborhood of 40 kinds of pieces of paper in excess of a million a year. In addition hat
685 checks would be out in large numbers. Outer zone transfers are not so numerous. With increased friction between the company and the public also, confusion and actual loss to the company would result by increasing the number of such things with which our conductors have to be familiar, since each piece of paper is subject to abuse.

Recross-examination:

Each conductor has with him only three or four of the forty forms, but has to be prepared to honor or reject all

forty. The conductors do not issue that many, but
686 when they issue them the company has the added burden of accounting for such issuance, to be sure that the ride is sold for the proper amount of money. The additional difficulty would depend on the type of the new forms of the paper to be issued, whether they are worth money or not, although all are an evidence of value or a protection against loss of revenue. As far as honoring three or four more forms, it will not be a serious matter
687 but would be considerably more serious from a standpoint of issuing them. We would like to reduce the number we now have. These forty forms mentioned are largely the different kinds of transfers we have, each line [fol. 469] having different kinds to prevent back-riding abuses. A single transfer form would be the simplest to issue, the difference in form being largely to prevent abuses in back-riding, and eliminate punching hours, route, etc. All forty are transfer forms, the other forty making up the total of eighty which I mentioned being those used in numbers less than a million a year.

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688 Mr. R. B. Hill, a witness called on behalf of the Los Angeles Railway Company testified as follows:

I have been Superintendent of Operations about eight years, having been about 25 years with the company before that time. With Mr. Weeks and Mr. C. Recappe I made a study of Mr. Mott's Exhibit 64.

689 The 18 per cent riders which Mr. Mott estimated would go through the inner neutral zone is taken from a rush-hour check, and I believe it is erroneous because we do 60 or 65 per cent of our business during such hours, and I do not believe as much as 18 per cent go through such a zone during the off-peak hours. I think Mr. Weeks' estimate of 12 per cent is more accurate. In such hours only a small percentage go through such zone. If the zone proposal suggested by Mr. Mott were put into effect, it would be extremely difficult to handle, the hat check plan being the only practicable method in safeguarding the interests of the company. I know of no other way. This would result in confusion and dissatisfaction, and would slow up

movement in the congested district, also outside that
690 district, and because only one end of the car could be used as an exit on the outgoing trip in the outside section, there being a pay-as-you-leave part (with the hat check in that section). This would be specially objectionable during peak hours. It would be extremely diffi- [fol. 470] cult for the conductor to check passengers leaving the car and at the same time taking transfers at transfer points in the outlying districts. The company could not operate the system and give as good service as it gives now under the one-man—two-man operation pro-
691 posed by Mr. Mott, because it would not apply to the riding habits of many passengers. I question the practicability of such a plan on heavy traffic lines fed by bus lines with heavy competition without slowing down the schedule so that estimated savings would be offset by additional car hours or by platform men's time. It is desirable to get as much speed as you can out of cars rather than slow them up. The tendency should be to increase speed.

691 I have had occasion to deal continuously with the traveling public and in my judgment the public would not be satisfied with a service that is less adequate than the one now rendered. From a fair study of the traveling public's standpoint and even the regulatory body standpoint, I think it is desirable to get as much speed as you can out of the cars rather than to slow them up and I think it is the tendency to increase the speed and it should be from an economical standpoint.

Cross-examination:

692 During the hours from six to ten A. M. and from three to six P. M. during which the check was made which resulted in the 18% through rider figure above mentioned, sixty to seventy per cent of the total traffic is handled. From nine to ten and from three to four are not, generally speaking, rush hours. The largest amount of business is done between seven and nine A. M. and five to six P. M. We have no definite checks of such passenger movements during other hours than those included in the above mentioned check but have merely a general judgment that a larger percent ride through the inner zone district

than during the rest of the day. There is a possi-
694 bility that I may be mistaken in this, though I do not think an actual check would show just the re-
[fol. 470-a1] verse. I am fairly well acquainted with the riding habits and business done by the different merchants downtown. Some days there might not be 5% through riders in off peak hours, but on days of big sales, it is my opinion that it would not go 1%.

[fol. 471] I agree with Mr. Weeks' Estimate of 12 per cent passing through the inner neutral zone during
696 off-peak hours, but I have no other method of arriving at the 12 per cent than Mr. Weeks had. My interpretation of a "casual rider" is a person who only rides occasionally, a regular rider being one who rides at about the same hour nearly every day regardless of what hour it is. I worked on Exhibit 68, doing the detail work, with Mr. Recappe. In our study we considered four street car lines on two of which we used the inside limits which in our opinion could be used as two-man operation. These were the "N" and "O" lines. However, Mr. Re-
698 cappe did the actual detail work on these schedules. The others were the "H" and "B" lines. We used the two-man more liberally on the second pair than on the "N" and "O" lines, trying to establish the limits for such operation.

699 We estimated close in one end of each line and further out on the other, these being in our opinion about the limits for operation under the one-man—two-man plan.

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700 Mr. L. A. Recappe, witness called on behalf of the Los Angeles Railway Company, testified as follows:

I have been Superintendent of Schedules of the Los Angeles Railway Corporation since October, 1922, having been with the company the greater part of twenty years. I worked on Exhibit 68 with Mr. Weeks and Mr. Hill. In Plan No. 1, referring to one-man operation outside of the congested area, we took four time tables representative of other time tables of the system and analyzed them carefully, especially certain limits for two-man operation, with

one-man operation beyond such limits. I figured the two-man time on the basis of running time plus idle waiting [fol. 472] time for a conductor between cars moving in opposite directions. Motorman's time was taken as the lapsed time between limits of the two-man zone, the terminal of the line, and return again to the two-man zone limit. We aded 10% to this because of slowing up by reason of one-man operation. My solution was made on a
percentage basis showing a saving in conductor's
702 time of 7.4 per cent on the tables analyzed which
figure we afterwards applied to the entire system. Also we added 2 per cent in addition to the ten per cent above mentioned to cover "overlap," where a relief conductor would not get to the relief point in time to pick up the car from the opposite direction creating thereby additional one-man time, for which there would be a claim on the part of the operator. That would be 28 per cent of the time. This is the detail we went into and the means
by which we arrived at our conclusions (Exhibit 69
704 presented showing details of these figures). The
net saving arrived at by my computations would be $163,917.00. The proportion of one-man time in the entire schedules under this one-man-two-man plan, after deducting the saving for conductors, is 28 per cent. We worked out our estimate under the other plan in practically the same manner.

Cross-examination:

The 10 per cent slowing up of schedules which I
706 mention would take place in almost any district of
one-man operation and is really a low figure, a very conservative figure. It does not apply to the whole time of the motorman, but only to the time within those districts outside of the inner zone. The 2 per cent overlap above mentioned arises because we pay 4¢ more an hour for one-man operation than for two-man operation and this would be claimed by the motorman. I arbitrarily assume that various casualties and interference with traffic would amount to about 2 per cent of the total situation, but that assumption is based absolutely on my experience in operating. The limits which I place on two-man opera-
710 tion are based on my knowledge of travel characteristics on the various lines. The added duty of the

[fol. 473] motorman in one-man operation would have a tendency to slow down movement. I do not know whether other operating companies are meeting that burden successfully or not.

746 A. A. Mott—Redirect examination:

The rather large discrepancies between my estimates of savings by one-man operation and those made by company witnesses depend, in the so-called one-man-two-man plan, upon the extent to which two-man operation would be used. The company's estimate is based on continuing two-man operation over the major portion of the length of each line, while my estimate was based on restricting two-man operation to the really congested area. It is clear that if two-man operation is extended to the total lines and conversion of equipment costs are added, there would be no savings but would be very substantial losses. The two estimates are on entirely different bases.

Slowing down of traffic is a minor item in making these estimates, and is not of sufficient importance to be given much attention.

The chief discrepancy in the one-man operation with ground loader plan estimates is small and seems to arise from the fact that the company would use more ground loaders than I have estimated would be necessary. Without comparing Mr. Recappe's detail point for point I cannot have an opinion as to where these men should be located and at what hours, but I believe my estimate to be more liberal than the situation's reasonable necessities and if put into effect the company would find it could get along with less ground conductor hours than I have estimated. I tried to be liberal in my allowance. The difference is purely a matter of judgment.

749 Cross-examination:

It would be more difficult to put in the zone plan with [fol. 474] the one-man-two-man operation plan than the zone plan one-man operation and ground conductor, but I see nothing unreasonable or impossible, or even really difficult, in the latter combination. The zone plan will make a greater financial change to the company than would ground conductor operation. The certainty of the revenue

which would be received is good because of the very accurate check we have in Los Angeles. It would not at all disturb the fare of about 85 per cent of the present patrons. Of course, any change in rates is always a matter of serious concern to the company because rev-
750 enues are its most serious matter. I do not think that the result will cause any worry to the company but it is always a serious thing when a company desires to change its form of fare or kind of fare or anything of that sort because when you tamper with revenues you tamper with the most vital concern of the company. I believe the company should take the one-man-two-man car proposition very seriously. On the question of whether this matter has been given sufficient consideration by me and my assistants, and whether it has been sufficiently discussed with the company to justify me in making definite recommendation, I first want to say that I have not definitely recommended any precise thing. I certainly think that the company should use its best constructive effort in working out the details of any plan which would be most effective to the total good of the situation, having in mind both company aspects of it and the public aspects of it. I do mean to say that the details should be very carefully gone over in every respect. The details should be carefully gone over and if the company can show im-
751 provements or justified changes in my plan they should be made. In principle I am convinced that your situation can be met by a combination of two of those plans and you would have to take what time is necessary to accomplish the result for more damage could be done by an improper attempt to solve the problem than by a few months delay in solving part of it.

[fol. 475] Redirect examination:

I took an extensive trip to the east to study local transportation situations in important centers to ascertain anything beneficial or helpful to the California situation, there then being pending rate proceedings involving nearly
752 all major electric railway properties in California. This case was one of the major cases that I had in mind during my trip. When I left I was considering the

possibility of this inner neutral zone system by which the 5-cent fare could be retained in Los Angeles and additional revenue be produced for the company from the relatively few passengers who were given a larger service than the majority. I also considered that a system which would throttle the growth of the city and its outlying sec-
753 tions would be unpopular and I tried to avoid that disadvantage. I discussed fare problems with the responsible operating officers of local transportation systems in nearly all of the cities I visited. Two coin fares are in effect in most of the smaller cities in California; the change from 5-cents to 6-cents took place a number of years ago in the smaller cities. On the Key System Transit Company in Oakland a year and a half ago the increase was from 6-cents to 7-cents and, while the estimated increased revenue was about $800,000.00 the actual increase in revenue amounted only to about $300,000.00. This clearly shows that there is a very definite objection to either the amount or the kind of that fare. In the eastern
754 cities where they have multiple coin fares I find from a financial point of view that the situation is comparable to the Key Route System and was much worse than the situation in the two large five-cent fare cities in California that I came to the conclusion that there must be some inherent merit in the basic 5-cent fare. As to the practical working out of the inner neutral zone plan I believe that where there is a will there is a way. I had not [fol. 476] thought out the detail of that, but, of course, I did test the practicability of the plan because it is at
754 least one possibility. I am surprised that such a cumbersome plan as the hat check system has been suggested today by the company. I have thought it quite natural to follow a plan something like the following. If a passenger should board a car outside the inner neutral zone line he would probably transfer to some point within that zone not reached by his car and be given a transfer, let us call it a blue transfer. On boarding the second car within the neutral zone he would offer the conductor this transfer and it would be recognized as entitling the passenger to any point within the inner zone line. If, however, a passenger coming into the zone desires to go on out of it on some other line he might get the same kind of a

transfer which would be honored as far as the far line of the zone and if he stayed on the car after that he would have to pay an additional fare on descending having ridden through two sides of the inner zone. If he stayed on the same car and rode through the inner zone he would not have to ask for a transfer but would stay on the car until he got to his destignaiton beyond the zone and would pay another fare on descending.

756 If a passenger boards the car within the inner zone he would be handed some other type of transfer, say a "pink transfer" but if he desires to transfer to some other line within the inner zone this pink transfer would not be collected but would be retained and he would ride to destination outside the inner zone, surrendering it to the conductor on descending from the car. It would be evidence that he had paid his fare since entering the inner zone. If a passenger boarded a car outside of the inner zone and desired to ride through it he would also be given [fol. 477] the same kind of transfer and would retain it, surrendering it on descending in the further outer zone.

There is one other kind of trip, a man might board a car in the inner zone, obtaining the pink transfer, at a point in the outer zone he might wish to transfer to another line and, on descending from the first car, would ask for a transfer. This could either be in the form of

757 a coupon on the pink transfer, if desired, which which could then be torn off and the rest retained for use as a transfer. This plan could be worked out for all types of rides. I am not speaking of bus transfers with unusual auditing arrangements with the Pacific Electric Railway Company. I believe the basic transfer would be reduced from about forty forms to these two forms merely because of the establishment of the inner zone, beyond which no passenger could go without paying a second fare. This would automatically eliminate the possibility of long back hauls and greatly reduce the complications of the present transfer system.

758 A far more complicated zone system is in effect in Jersey City, New Jersey, with many zones and complete one-man operation without great public objection and the company appears to get along very nicely on 5-cent zone fares. The zones are quite short and the system cov-

ers a large territory, with a considerably larger population than Los Angeles. As a matter of fare collection the plan works and the people seem to be quite satisfied.

759 In Newark, New Jersey, they had a multiple coin fare around 8-cents, but the company convinced the New Jersey Commission that it needed more money and an arrangement was worked out whereby it went back to the 5-cent fare split up into many zones to produce the needed revenue.

[fol. 478] I might say that the 10-cent fares seem to be in a more stabilized condition than the 7-cent and 8-

760 cent cities. Most of the larger cities have a higher fare than you are proposing. I found no zones in connection with multiple fares except in the same zones as Los Angeles Railway Company zones out almost to

761 the ends of the lines. There are very few situations where you are justified in having a third zone in the inner neutral zone plan. I speak now of your very short zones in the southern end of the city. If a passenger reached the point where such a second outer zone line was reached it is beyond hte point where most of the heavy load was descended and the conductor could go through and either collect the fare or identification check from the relatively few passengers then on the car. He could then collect the second fare good through the next zone or, if the system were on a pay-as-you-leave basis the situation would be similar to the Pacific Electric zone system passing Sanborn Junction. If there were more passengers on the car a man would have a little more difficulty in going through but it would not be delayed unless it were a

762 one-man car. On a two-man car the motorman would decline to let people off the front door after the zone point was reached until the conductor had arrived at the front of the car. In differentiation from the hat check plan I would substitute a piece of paper which would be used for either identification or transfer, with the complete abandonment of the present complicated transfer system which is no longer necessary when back hauls through the zone line are automatically eliminated. You could have the identification portion of the coupon collected by the mo-

763 torman, if you desire, as in the one-man car operation. There would be the complication, if you

wanted to expand that of adding fare collection devices for the motorman for collecting cash fare upon leaving the car. I do not think this is serious but probably would [fol. 479] expedite two-man operation service. The population of the City of Newark is slightly under a million, with a number of large neighboring communities, served with essentially local lines of street cars, though some extend some distances from one business center to another, the operation being 100 per cent one-man.

Redirect examination:

One of the differences between my estimates and those of the company on the zone plan turned apparently on the habits of the casual rider. I have defined him, as Witness Hill defined him, to-wit, one who does not ride regularly about the same hour of most days. I believe there are casual riders during all of the hours of the day and some regular riders during all hours of the day. The major portion of our population have their fixed habits determined by occupation, most people starting to work about the same time every day and coming back from work also about
764 the same time every day. Therefore most regular riding is done during peak hours, which makes the peak. There is some casual riding during those hours but I believe that the substantially larger proportion of riders is made up of casual riders during off peak hours than during peak hours, therefore, any errors in my estimate based on the 18 per cent figure are errors which if corrected, would result in increase in revenue in those estimates.

[fol. 479-a1] STATEMENT BY CITY ATTORNEY STEPHENS

(Volume 5, Page 518, Lines 21 to 29, and Page 519, Lines 1 and 2, inclusive, Transcript before Railroad Commission.)

Mr. Haskins:

Q. Mr. Mott, how about the jurisdiction of the Railroad Commission to prescribe the use of a one-man car within

the limits of the City of Los Angeles? Isn't that a
518 matter that vests in the municipality?

A. You are asking a legal question but I do not think I am competent to answer.

Mr. Haskins: I would suggest to the Commission that if a one-man car is prescribed in connection with this rate case, that the approval of the City of Los Angeles be obtained. I think that is necessary, don't you, Mr. Stephens?

519 Mr. Stephens: Yes, I agree with that as a matter of regulation.

[fol. 479-a2] In United States District Court

Extract from Reporter's Transcript of Argument Before Statutory Court, Los Angeles, July 24, 1928

P. 8, Lines 8 to 22, Inclusive

Colloquy Between Court and Counsel

Judge Hunt: Are we to understand that the Railroad Commission of the State in its consideration of valuations took in bus lines as well as street railways?

Mr. Taylor: That is true, your Honor.

Judge Hunt: The whole system was taken as a unified one?

Mr. Wheat: Yes, your Honor. It is a unified system. Of course we have a very important point to make as to the bus lines later.

Judge Hunt: I thought you might have, and that is the reason I wanted to keep that straight.

Mr. Taylor: I might state that in all the proceedings before the Railroad Commission the entire facilities, properties and operations of the Company were considered as one.

P. 120, Lines 11 to 25, Inclusive

Judge Hunt: While I think of it, what do you say with respect to the resulting profit that would accrue if you were permitted to put into use the straight seven-cent fare or

the six and one-fourth cent fare on the basis of $42,000,000? I am speaking only for myself, but my impression is, after listening to the arguments of counsel, that the Court would be indisposed to accept anything other than the $42,000,000 in the light of the intricacies of the testimony.

Mr. Taylor: In that connection, your Honors, while I wish the Court to distinctly understand we do not accede to [fol. 479-a3] the $42,000,000 valuation and can prove that it is erroneous, yet I think for the purpose of this motion we can assume it is correct, and for this purpose only, and I am willing to proceed along that basis.

P. 123, Lines 4 to 6, Inclusive

Mr. Taylor: * * * we have conceded for the purpose of this motion that $42,000,000 may be considered the fair value of plaintiff's property.

[fol. 480] Extract from Reporter's Transcript of Argument Before Statutory Court, Los Angeles, July 24, 1928

P. 132, Line 4, to P. 133, Line 19, Inclusive

Judge Hunt: What would there be to try finally in this case. Isn't everything before us now.

Mr. Wheat: I am frank to say I think everything is before your Honors. The record is before you, and clearly this case must be tried on that record.

Judge Hunt: We have before us the tabulations, and even the argumentative statements or affidavits of the gentlemen who are experts.

Mr. Wheat: Certainly.

Judge Hunt: We have had the advantage of able and painstaking and helpful arguments by you gentlemen on both sides.

Mr. Wheat: I may say this, your Honors: The franchises themselves the City would like to put in, and then there are one or two things which Mr. Taylor has said that I believe will be answered by the City.

Judge Hunt: We want to get these matters in as quickly as possible. Can't you get them all in within ten days?

Mr. Taylor: I am willing to waive my request to put the portion in I requested if the other parties do so; but, if they have that privilege, I would also like to have the privilege.

Judge Hunt: We think the case is somewhat simplified in this respect: We accept the $42,000,000 basis, and you will not enter into a controversy as to whether it should be $42,000,000 or $47,000,000. We will take the $42,000,000 basis. And it will be helpful to us to have some mathemati-
[fol. 481] cal demonstration of what rate should be charged in order to yield not to exceed 8 per cent on that basis.

Mr. Taylor: We will be glad to do that, your Honors.

Mr. Wheat: Of course, your Honor, that doesn't mean this Court now accepts 8 per cent as a fair return, does it?

Judge Hunt: Oh, no. That will save us a lot of figuring if you will do that.

Mr. Wheat: We will be glad to make such figures too. And may I say that the basis on which the gentleman for the plaintiff figures the question of net return is entirely different from the basis on which our engineers have figured? That is the reason why the return on the 7-cent fare which you asked concerning shows a very low return, whereas ours shows a much higher return.

P. 134, Line 7, to P. 135, Line 4, Inclusive

Judge Hunt: With respect to the submission of the whole case, is there anything further in the case than we have here in this record?

Mr. Wheat: I don't think so.

Mr. Taylor: If the Court is convinced that the figure of $42,000,000 is correct, I don't see anything to decide in a subsequent trial.

Judge Hunt: Your contentions are thrown aside that it should have been more, and for the purposes of the application for an injunction, naturally after the argument the Court would be indisposed to enter into those matters. It would be an exceedingly difficult matter to analyze what has been before the tryers, and we would be very reluctant to disturb the conclusions reached with respect to that in the light of the testimony that has been referred to. You
[fol. 482] say that even on the basis of the $42,000,000, as a clean-cut demonstration, you are making less than 5 per cent; is that right?

Mr. Taylor: Yes, Your Honor.

Judge Hunt: That confines the case to that, and if that be true it would be determinative of the issue.

Mr. Wheat: I think that is an ideal way to work the case out, your Honor, to have it finally submitted on what is here now, and with the brief the City is going to file.

P. 135, Line 21, to P. 136, Line 7, Inclusive

Mr. Stephens: I may say our anwser will contain a reference to all of these franchises that have been mentioned by Mr. Mohr, although our affidavit I think contains a sample of each of the different kinds of franchise.

Judge Hunt: I think we understand generally that so many of the franchises have this clause, so many that clause and so many the other clause, and you may incorporate it in a brief; and, if there be a legal principle which is applicable to one and not to the other, the argument may be made accordingly. I wouldn't go to the trouble of setting them all out in detail.

Mr. Stephens: We will allege them, then, rather than set them out.

[fol. 483] IN UNITED STATES DISTRICT COURT

[Title omitted]

COMPUTATION OF FLAT FARES WHICH WILL PRODUCE VARIOUS RATES OF RETURN ON SYSTEM OF LOS ANGELES RAILWAY CORPORATION (Based on 1927 Operations)*—Filed Aug. 7, 1928

Actual Operations—Year 1927

Actual gross revenue		$13,287,601
Actual operating expenses	$9,503,632	
Depreciation allowed by R. R. C. (See Note 1)	979,209	
Actual taxes	814,347	
		11,297,188
Net Income available for return		1,990,413
Rate of return on rate-base of $42,000,000 (See Note 2)		4.7%

Note 1.—The actual net charges to the depreciation reserve during the year 1927, amounted to but $797,259.

*Filed in response to request of Circuit Judge William H. Hunt.

Average annual net charges to said reserve during the last past 15 years have amounted to $347,506. as compared with the amount of $979,209. allowed by the Commission in its Decision No. 19,521. It is apparent that if such actual net charges to depreciation reserve in 1927 were to be used the net income would be increased to $2,172,363. or a 5.2% return on $42,000,000.

Note 2.—The results from operation as above stated include losses incurred in operation of motor busses. If losses on motor bus lines for which no increase in rates is sought were to be excluded, the rate of return would be 4.9% with the Railroad Commission depreciation allowance, and 5.4% under the company's actual depreciation reserve charges for the year 1927.

[fol. 484] To Bring Six per Cent Return

Increase of net income necessary to produce 6% return	$529,587
Increase in taxes if such additional income is produced in gross revenue (instead of by savings in operating expense. See Note 3)	109,191
Additional gross income necessary to produce 6% return	638,778
Average fare required to produce 6% return	5.27 cents

(Calculated by adding to the basic 5 cent fare now in effect the increase in that fare represented by the above increase in gross revenue applied to the passengers of 1927 whose rates are now asked to be increased.)

To Bring Seven per Cent Return

Increase of net income necessary to produce 7% return	$949,587
Increase in taxes if such additional income is produced in gross revenue (instead of by savings in operating expense. See Note 3)	195,775
Additional gross income necessary to produce 7% return	1,145,362
Average fare required to produce 7% return (Similarly calculated)	5.48 cents

To Bring Eight per Cent Return

Increase of net income necessary to produce 8% return	1,369,587
Increase in taxes if such additional income is produced in gross revenue (instead of by savings in operating expense. See Note 3)	282,372
Additional gross income necessary to produce 8% return	1,651,959
Average fare required to produce 8% return (Similarly calculated)	5.69 cents

Note 3.—The Railroad Commission found that large amounts could be saved in operating expense by the introduction of operating economies.

[fol. 485] Increase in Net Income under Fares Proposed by Plaintiff

(Calculated by applying such increases to the passengers of 1927 whose rates are now asked to be increased)

	If all passengers use 7¢ cash fare	If all passengers use 6¼¢ token fare	If 40% of passengers use 7¢ cash fare and 60% use 6¼¢ token fare (See Note 4)
Increase in gross revenue	$4,781,376	$2,988,360	$3,705,567
Increase in Taxes (Deduct)	817,316	510,823	633,420
Increase in Net Income	$3,964,060	2,477,537	3,072,147
Actual Net Income	1,990,413	1,990,413	1,990,413
Total net income	5,954,473	4,647,950	5,062,560
Return on $42,000,000	14.2%	10.6%	12.1%

Note 4.—On October 26, 1926, a 7 cent cash fare with a 6¼ cent ticket fare was made effective on the street railway and motor bus system operating in Pasadena, and a check of the actual results of the application of that fare discloses that 60% of the passengers use the 6¼ cent ticket and 40% pay 7 cents cash. This is the only city in California where experience as to this rate is available.

[fol. 486] [File endorsement omitted.]

[fol. 486-a1] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF RICHARD SACHSE—Filed Aug. 9, 1928

Showing, as Requested by the Court the Rate of Fare Necessary to be Charged by Plaintiff in Order to Yield a Return of Not to Exceed 8 per Cent on $42,000,000

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Richard Sachse, Plaintiff's consulting engineer, being first duly sworn, deposes and says:

That in compliance with the request of the Court in the hearing on July 24th, 1928, (1) I have made an estimate of the rate of fare required to be charged by plaintiff herein in order to yield a return not to exceed eight per cent (8%) upon the rate base fixed by the California Railroad Commission as a measure of the value of plaintiff's property used and useful in the public service, as such rate base appears in Commission's Decision No. 19521, dated March 26, 1928, to-wit: forty-two million dollars ($42,000,000.)

Plaintiff in its Bill of Complaint alleged that the Commission in fixing such rate base of forty-two million dollars ($42,000,000) took into consideration solely the estimate of historical reproduction cost made by its engineering department without considering any other elements of value, and in support of such allegation plaintiff quoted to this [fol. 486-a2] Court the "findings of fact" by the Commission in said Decision No. 19521, to-wit:

"1. That a reasonable rate base to be used for the purpose of computing a fair return upon the operative property of this company is the sum of forty-two million dollars ($42,000,000).

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(1) "Judge Hunt: We think the case is somewhat simplified in this respect: We accept the $42,000,000 base, and you will not enter into a controversy as to whether it should be $42,000,000 or $47,000,000. We will take the $42,000,000 base. And it will be helpful to us to have some mathematical demonstration of what rate should be charged in order to yield not to exceed 8 per cent on that basis.

"Mr. Taylor: We will be glad to do that, Your Honors." (Tr. pp. 132-133).

2. That the financial results from the operation of applicant's property, under present operating methods, for the year 1927, based upon estimates contained in the record, may be fairly stated as follows:

Total Operating Revenues	$13,254,000
Total Operating Expense, including depreciation, computed on a 5% sinking fund basis and taxes	11,183,739
Net Income available for return	2,070,261

And finding No. 4, to-wit:

"That the rate of return earned by applicant under existing fares and methods of operation for the year ending December 31, 1927, was aproximately 4.9%."

Plaintiff's said allegation is denied by the Commission through its counsel as follows:

"The Railroad Commission did not base its order or findings solely upon the so-called 'Historical Cost' theory, but took into consideration, and gave fair and proper weight to every proper element in arriving at its finding of rate base for plaintiff's properties."

(Heading on page 60 of Defendant's Brief in Opposition to Motion for Interlocutory Injunction.)

For the purpose of this estimate and for that purpose only, I assume the correctness of defendant's statement quoted above with reference to the Commission's determination of its forty-two million dollar ($42,000,000) rate base. As a necessary consequence to the acceptance of counsel's said statement, I also accept, again only for the purpose of this estimate, the operating expense allowance for depre- [fol. 486-a3] ciation as made by the Commission's chief engineer, A. G. Mott, and by the Commission's assistant engineer, J. E. Cooper, as shown in their exhibits Nos. 63 and 64, respectively. The testimony of all witnesses before the Commission, including the Commission's engineers, was unanimous and without conflict to the effect that in computing the operating expense of depreciation such computation must be made on the same basis as the computation for the deduction of accrued depreciation from the

value of the property. In the proceeding before the Commission all computations based on depreciated property values were made on the straight line basis, and the straight line basis is the basis actually used by plaintiff since 1921, in accordance with the Commission's instructions.

The following table, together with the explanatory statements following is my estimate of the fare required to be charged on plaintiff's street railway system in order to produce gross revenue sufficient to provide the total cost of service, including not to exceed 8% return on a rate base of $42,000,000 for a period of one year after the effective date of the new rates.

Table Showing Fare Required to Produce Sufficient Revenue to Meet Total Cost of Service, Including Return of not Exceeding 8% on Value of Plaintiff's Operative Property as Fixed by the California Railroad Commission ($42,000,000) for Period of One Year After New Rates Take Effect

(1)	Rate Base as of December 31, 1926, as found by Commission in Decision 19521	$42,000,000
(2)	Rate of Return	8%
(3)	Net Income required to produce 8% return on $42,000,000	3,360,000
(4)	Minimum Operating Expenses, exclusive of depreciation and taxes, for first year after new rate takes effect	10,274,760
[fol. 486-a4] (5)	Operating Expense of Depreciation as estimated by Commission's chief engineer, A. G. Mott, and assistant engineer, J. E. Cooper	1,556,917
(6)	Taxes	1,229,686
(7)	Total Operating Expense, not including return (items 4-5-6)	13,061,363
(8)	Total cost of Service including 8% return (items 3-7)	16,421,363
(9)	Gross Revenue estimated to be produced by straight 7¢ fare, without reduced tickets or tokens	16,031,171

(10) Straight 7¢ fare will produce Net Income available for return of (item 9-7).....	2,969,808
(11) Plaintiff's estimated income other than from transportation	130,000
(12) Total Net Income available for return under straight 7¢ fare (item 10-11).....	3,099,808
(13) Total Net Income under straight 7¢ fare will fall short of producing full 8% return on $42,000,000 by (item 3-12)....	260,192
(14) The Total Net Income available for return under straight 7¢ fare (12) is equal to a rate of return on Commission's rate Base of $42,000,000 of.....	7.38%

In explanation of the preceding table the following is to be said:

Items (1), (2) and 3) require no comment.

Item (4) is the minimum operating expense, exclusive of depreciation and taxes, required for the first year after new rates take effect and consists of labor and material expense for the operation of plaintiff's transportation system based on actual normal expenses, without any allowance for increased wages or salaries of plaintiff's more [fol. 486-a5] than 4,300 employees, although wage increases undoubtedly will occur. Allowance is made only for a minimum of increased rail and bus service as such minimum service increase was promised by plaintiff to representatives of the City of Los Angeles in the hearing before the California Railroad Commission in the expectation that the Commission would allow plaintiff a rate of fare which would meet the reasonable cost of service, including a fair return. No allowance whatever is included in this item for the greatly increased expenses in the event that the so-called universal transfer between plaintiff's system and the local lines of the Pacific Electric Railway is put into effect.

Item (5). Operating Expense of Depreciation is the figure allowed by the Commission's chief engineer, A. G. Mott, and the Commission's assistant engineer, J. E. Cooper, in their exhibits and testimony in the hearing before the Commission (exhibits Nos. 63 and 64). This allowance is based on the valuation of plaintiff's property

as made by the Commission's engineers and excludes any allowance whatever for depreciation on all items "not agreed upon" in the "Joint Report." This item corresponds to the varying annual amounts actually charged to depreciation by plaintiff in accordance with the ruling of the Commission in 1921, and at that time jointly determined by the Commission's and the City of Los Angeles' engineers. The amount in item (5) is $456,174 less than the depreciation operating expense computed by Commission engineers Mott and Cooper based on their reproduction cost less depreciation valuation of plaintiff's property (exhibits Nos. 63 and 64) and is $606,024 less than the amount computed by plaintiff's engineers for the year 1927, on the same basis.

There is also no depreciation whatever allowed in this item on plaintiff's system as a whole by reason of expiring franchises, notwithstanding the fact that in its Decision No. 19521, and in its affidavits and arguments before this Court the Commission alleges extensive depreciation [fol. 486-a6] of plaintiff's property by reason of such expiring franchises [2].

Item (6), Taxes, consists of local, state and federal taxes as follows:

Gross Revenue Tax—5¼% on $16,031,171	$841,636
Franchise Tax—0.43% on $16,031,171	68,934
Gasoline Tax	50,000
Flood Control Tax	22,000
Total State and Local Taxes	$982,570
Federal Taxes:	
Income Tax 12½% on net, after deduction for State and Local Taxes and Interest	247,116
Total taxes	$1,229,686

[2] "The properties of the Los Angeles Railway are impaired in value by virtue of the fact that they occupy public streets of the City of Los Angeles and vicinity under no less than one hundred and fourteen (114) individual franchises, many of which franchises are due to expire within the next five (5) years, as shown more particularly in the affidavit of E. P. McAuliffe, filed herein, and there is no assurance that Los Angeles Railway Corporation can have all or any of said franchises extended upon as favorable terms as they were originally granted."

(Affidavit of A. G. Mott, the Commission's chief engineer, lines 17 to 25 on page 42.)

(10) Straight 7¢ fare will produce Net Income available for return of (item 9-7).....	2,969,808
(11) Plaintiff's estimated income other than from transportation	130,000
(12) Total Net Income available for return under straight 7¢ fare (item 10-11).....	3,099,808
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as made by the Commission's engineers and excludes any allowance whatever for depreciation on all items "not agreed upon" in the "Joint Report." This item corresponds to the varying annual amounts actually charged to depreciation by plaintiff in accordance with the ruling of the Commission in 1921, and at that time jointly determined by the Commission's and the City of Los Angeles' engineers. The amount in item (5) is $456,174 less than the depreciation operating expense computed by Commission engineers Mott and Cooper based on their reproduction cost less depreciation valuation of plaintiff's property (exhibits Nos. 63 and 64) and is $606,024 less than the amount computed by plaintiff's engineers for the year 1927, on the same basis.

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[2] "The properties of the Los Angeles Railway are impaired in value by virtue of the fact that they occupy public streets of the City of Los Angeles and vicinity under no less than one hundred and fourteen (114) individual franchises, many of which franchises are due to expire within the next five (5) years, as shown more particularly in the affidavit of E. P. McAuliffe, filed herein, and there is no assurance that Los Angeles Railway Corporation can have all or any of said franchises extended upon as favorable terms as they were originally granted."

(Affidavit of A. G. Mott, the Commission's chief engineer, lines 17 to 25 on page 42.)

Items (7) and (8) require no explanation.

Item (9). Gross Revenue estimated to be produced by straight 7¢ fare is computed in conformity with a similar estimate introduced in the hearing before the Commission (exhibit No. 23), and is also in substantial agreement with the traffic estimates under various rates of fares made by the chief engineer of the Commission in his exhibit No. 64. He estimated that the 7¢ cash fare, with four tokens for 25¢, as asked by plaintiff, would result in a curtailment of traffic of 6% as compared with the traffic under the present 5¢ fare, and that a straight 6¢ cash fare, without tokens, [fol. 486-a7] might result "in a deflection of business amounting to as much as 10%." I have estimated for the first year a similar 10% curtailment of traffic under the straight 7¢ fare without reduced token or ticket fares (a 5% curtailment for the first year was estimated by me under the fare proposed by plaintiff of 7¢ cash fare with 4 tokens for 25¢). Allowance is also made for such increase in traffic as is estimated to come from the increased rail and bus service referred to under item (4).

Item (10) requires no explanation.

Item (11). Estimated income other than from transportation, is based on plaintiff's actual 1927 income as thus defined in the accounting classification prescribed by the Commission and consists of the following items:

Station and car privileges	$55,313
Rent of equipment	6,073
Rent of buildings and other property	59,992
Miscellaneous	4,832
Total in 1927	$126,210

Items (12), (13) and (14) require no explanation.

The above estimate is the most accurate and most reasonable computation I can make to comply with the Court's request and is based as to valuation and depreciation on the findings of the Commission and the computations of the Commission's engineers and as to revenues and operating expenses on plaintiff's actual operating experience during the last three years.

Richard Sachse.

Subscribed and sworn to before me this 8th day of August, 1928. Edna S. Rees, Notary Public in and for the City and County of Los Angeles, State of California. My Commission expires June 26, 1929. (Seal.)

[fol. 486-a8] [File endorsement omitted.]

[fol. 487] IN UNITED STATES DISTRICT COURT

In Equity. No. N-115 J

LOS ANGELES RAILWAY CORPORATION, a Corporation, Plaintiff,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, Defendant, CITY OF LOS ANGELES, Intervenor

ORDER FOR DECREE

In this cause the application of plaintiff for an Interlocutory Injunction having been presented to the Court, and evidence having been submitted by the parties, and argument of counsel, both oral and by briefs, having been made, and the parties having stipulated in open Court that the hearing so had be considered as a trial of the issues, and that final decree on the evidence heard be made herein:

The Judges of the Court having agreed upon their decision, and having expressed their conclusions in a written opinion which is appended hereto, it is now ordered that said opinion be by the Clerk filed.

Dated this 10th day of September, 1928.

Wm. H. Hunt, Circuit Judge. Wm. P. James, District Judge. Wm. H. Sawtelle, District Judge.

[fol. 488] IN UNITED STATES DISTRICT COURT

In Equity. No. N-115-J

LOS ANGELES RAILWAY CORPORATION, a Corporation, Plaintiff,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, Defendant; CITY OF LOS ANGELES, Intervenor

On Motion for Interlocutory Injunction

Before Hunt, Circuit Judge, and James and Sawtelle, District Judges

OPINION—Filed Sept. 10, 1928

By the Court:

Plaintiff's electric car tracks occupy public streets in Los Angeles under franchises granted by the city, and county, of Los Angeles. Its bus lines are operated under permits granted by the county. In some of the franchises for electric lines there are provisions that the rate of fare shall not exceed five cents except under a proper showing before a competent authority having jurisdiction over rates of fare that such greater rate is justified; in others there are clauses that the rate of fare for any distance one way shall not exceed five cents for one passenger. A franchise ordinance adopted in December, 1924, provides, among other matters, that the grantee may operate in accordance with and limited only by the statutes of California applicable thereto, that the rate of fare for any distance [fol. 489] shall not exceed five cents for one passenger, that there shall be transfers and that the franchise is granted upon each and every condition set forth in the instrument and that a failure to comply with each and any of the conditions of the franchise would work an immediate forfeiture of all the rights granted. From and after 1910 plaintiff had charged a basic fare of five cents for a continuous ride in the same general direction. Free transfers with half fares to school children and students on the electric lines, and ten cents on motor bus lines are the only rates

now charged and collected. In 1918 the plaintiff requested the Railroad Commission to make an investigation of its service and condition with a view to stabilization of its financial affairs. In May, 1921, the Commission issued a permissive order (No. 9029) authorizing the plaintiff within thirty days to increase its basic fare to six cents; but by advice of Henry E. Huntington, who at that time owned all of the stock of the company except a few qualifying shares, the authorized increase was not adopted, for the reason that Huntington believed the company could be put in a reasonably satisfactory financial condition as had been recommended by the Railroad Commission of the state. As of September 30, 1926, there had been issued 200,000 shares of common stock of a total par value of $20,000,000, upon which dividends in bonds only, in the sum of $1,500,000, and not more, had been paid since 1911, the last payment having been made in December, 1913.

Plaintiff alleges that the plan advised was impossible and that plaintiff at the time of the filing of the bill herein was indebted to the estate of Huntington in a sum exceeding $8,000,000; that its financial condition grew worse until November, 1926, when it applied to the Commission for permission to establish a basis fare of seven cents with four [fol. 490] single fare tokens for twenty-five cents and with free transfers and half fares for school children and students. In asking for the increase the company set up that the cost of money was not less than six and one half per cent, which was greater than the return possible for it to earn under the basic five cent fare, and that under the proposed increased fare the annual return would be less than seven per cent per annum. Hearings were had by the Commission, and about May 17, 1928, the company requested permission to put in effect, temporarily, a basic rate of six cents, pending the final outcome of the investigation into the merits of the application it had filed. In its last referred to application the company averred that it was confronted with an emergency in that it could not proceed with capital expenditures urgently needed, for the reason that it could not issue the necessary securities without the consent of the Commission, and that such consent could not be had until there could be a showing of adequate earnings which, in turn, could not be presented until the rate of

fare was raised and that unless the rate was increased there would be a loss of a minimum of two million dollars during the year 1927. On June 20, 1927, the application was denied, the opinion of the Commission being that to what extent the company was being damaged by continuing the five cent fare depended upon a determination of the major issues involved in original applications. After further hearings the Commission, on March 26, 1928, made an order denying the right to increase fares, and finding among other things, that the basic fare of five cents was just and reasonable. Rehearing was denied and the order (No. 19521) stands.

As part of the evidence presented by plaintiff to the Commission in the course of its investigation, was a detailed joint report on the valuation and financial and other conditions of the plaintiff's property in 1923, 1924 and 1925, [fol. 491] made by the engineer of the Railroad Commission, the engineer of the Board of Public Utilities of the City of Los Angeles, and the consulting engineer of plaintiff company. The report contained values of the plaintiff's property as of December 31, 1924, on bases for certain elements of value, provided, so the report stated, it was lawful to include such elements in a valuation. The agreed figures were: Reproduction cost new, $54,256,795; Reproduction cost new less depreciation, $39,998,891; Historical Reproduction cost, $41,678,050. These tabulations carried to December 31, 1926, make total reproduction cost new, $58,796,027; reproduction cost new less depreciation, $39,774,264; historical reproduction cost, $44,695,098. The totals just given do not include amounts for working capital or intangible items. Plaintiff avers that the report demonstrated that under existing rates its property during the years 1926 and 1927 had been confiscated to the extent of approximately $4,700,000, and that at the time of the filing of this suit was being confiscated by reason of the existence of the five-cent fare in a sum of not less than $7,000 per day, and that unless the fares are increased the property will continue to be confiscated in an ever-increasing amount. Plaintiff prays for an order enjoining the enforcement of the decision and order of the Commssion and thereby continuing the violation of its rights under the Constitution of the United States.

By motion to dismiss the Commission raised the question of the jurisdiction of the Federal Court, and whether or not the complaint stated grounds for equitable relief. There was also a motion to strike a number of allegations in the complaint, on the ground that they were redundant and merely evidentiary. At the hearing before us it was suggested that inasmuch as the motions involved the legal questions determinative of the whole case, the answers [fol. 492] which counsel for the Railroad Commission and for the city of Los Angeles stated they had prepared, might be filed at once, and thus the merits of the controversy could be better presented to the court for final disposition. Accordingly, the Commission and the city filed separate answers and after argument the matter was submitted.

The answer of the Railroad Commission pleaded that the reason why the railway company did not avail itself of the right to increase the fare to six cents was that it was earning at that time a greater return upon the fair valuation of its property than was reasonable or fair; denied all material allegations of confiscation, present or probable; denied that the value of the property of plaintiff is in excess of $42,000,000 or that it was ever agreed that the alleged joint report as to valuations should control as a proper estimate; alleged that 6½% upon the value of $42,000,000 is a fair return; averred that the orders of the Railroad Commission were all in accordance with the evidence before the Board, and that the financial condition of plaintiff arises from an improper and unwise policy with respect to the proportion of bonds to stock now outstanding on the system and its subsidiaries; alleged that in making up its valuation figures the railway company has included properties devoted solely to auto bus service as distinguished from street car service; that the bus fares are upon a higher and greater plane than the street car fares and that an increase in the street car fares without an existing increase in bus fares would create an unfair discrimination as between plaintiff's patrons and classes of patrons; that plaintiff's system to a large degree is antiquated in the various respects pointed out in the answer.

The answer of the City of Los Angeles, intervenor, as party defendant, is in most material respects substantially [fol. 493] like the answer filed by the Railroad Commis-

sion. It also pleaded the terms and conditions of franchises granted to the plaintiff, by some of which the rate of fare for any distance one way should not exceed five cents for one passenger, and alleged that a certain number of the franchises provide that the rates of fare shall not exceed 2½ cents per mile for any distance, provided that no fare be less than five cents; that a certain number of franchises limit the fare to ten cents with power in the Board of Supervisors to establish at any time a fare not exceeding ten cents and not less than five; that one franchise provided that the rate should not exceed three cents per mile; that all the franchises granted by the city were granted in accordance with the provisions of the Constitution of California and the general laws of that State and the charter of the city of Los Angeles and ordinances duly passed; that subsequent to March 2, 1920, certain franchises contained limitations providing a change in cost of five cents except where such change might be made by consent of an authority with power to make a change.

We can dismiss the several motions to strike portions of the complaint by saying that while, doubtless, there are some allegations of unnecessary facts and some averments which, construed strictly, may be objectionable as merely evidential, nevertheless, the whole complaint gives to the court an understanding of the material facts and conditions upon which the plaintiff rests its contention that by requiring operation under the present fares its constitutional rights have been and are being, and unless relief be given, will continue to be invaded and infringed. We therefore overrule the motions to strike, and pass to the more important grounds included in the motions to dismiss, and the answers.

Upon the jurisdiction of the federal court, it is enough [fol. 494] to say that when the facts show that a court of the United States has jurisdiction, the duty of the court is to take jurisdiction, and where one has a case within the jurisdiction of the federal tribunal, his right to choose a federal court cannot properly be denied (Wilcox vs. Consolidated Gas Co., 212 U. S. 19).

No one at this day will dispute the power of a state to regulate the conduct of railways within the borders of the state, acting through a board or commission whose duty it is to accomplish such regulation; but in the recognition of

such power of regulation by the state over common carriers and in accord with the scope of such power, the Supreme Court has distinctly laid down the rule that the property of the railways is under the protection of the fundamental guaranties of the Constitution, and is, therefore, justly entitled to the protection of the law, and there is no power under which such property can be taken from its owner without just compensation or without due process of law (Wisconsin etc. Co. vs. Jacobson, 179 U. S. 287). And closely applicable to the case under consideration is the principle that if the power of regulation by a state commission is exercised in such an unreasonable manner as to prevent the carrier from obtaining a fair return upon the property invested in the public service, it passes beyond lawful bounds, and the action in the exercise of the power is void because repugnant to the due process of law provision of the Fourteenth Amendment to the Constitution (Mississippi R. R. Com. vs. Mobile & Ohio R. R. Co., 244 U. S. 388).

Section 67 of the California Public Utilities Act provides that within thirty days after petition for rehearing is denied by the Railroad Commission, the applicant may apply to the Supreme Court of the state for a writ of review, but that in the Supreme Court the case shall be heard upon the [fol. 495] record of the Commission, and the review can go no further than to determine whether the Commission has regularly pursued its authority, including a determination whether the order violates any right of the petitioner under the Constitution of the United States or of the State of California. The statute makes the findings and conclusions of the Commission on questions of fact final and not subject to review, and requires that upon the hearing the Supreme Court shall enter judgment either affirming or setting aside the order of decision of the Commission. That the review contemplated by the statute is judicial in its character has been determined by the Supreme Court of the state in Pacific Tel. and Tel. Co. vs. Eschelman, 166 Cal. 640, and Napa Valley Elec. Co. vs. Railroad Commission, 257 Fed. 197, and the same case in 251 U. S. 366. It therefore seems certain that if the plaintiff in the present action had sought review of the order of the Commission before the Supreme Court of the state and that court had annulled the order of the Commission, plaintiff would have been obliged either to proceed anew before the Commis-

sion or to seek a writ of error to the Supreme Court of the United States, in which event, were plaintiff sucessful, it would have been obliged again to proceed before the Commission. But such procedure was not the only avenue through which relief might be sought, for when the Commission made the order denying plaintiff's right to increase its fares, the proceeding being judicial, the company could resort to any court having jurisdiction to afford relief. (Prendergast vs. New York Tel. Co., 262 U. S. 43.) In R. R. Commission vs. Duluth St. R. Co. 273 U. S. 625, the court considered the one question whether the street railroad company had the right to go into the federal court when it did, and whether its suit was premature because of the state statute allowing an appeal to the Supreme Court of [fol. 496] the State from the order of the State Commission, and held that it should be remembered that the requirement that state remedies be exausted "is not a fundamental principle of substantive law but merely a requirement of convenience of comity." It follows that if there is a clear showing that the rates to which the company is confined are confiscatory, the duty of the federal court is to issue injunction.

The city would avoid the applicability of these general principles by contending that although admitting the franchise rates are subject to change by the State Railroad Commission, nevertheless the franchises are contracts between the parties, and that therefore no substantial federal question is presented and the federal court is without jurisdiction to grant plaintiff the injunctive relief it asks. Briefly answering this contention, we think it may well be doubted whether the State of California ever delegated power to the city to contract with a public utility on the subject of rates so as to restrict future regulation. Since the adoption of Article XII, section 23 of the Constitution of the state on November 3, 1914, the entire control over rates of public utilities has been expressly reserved to the Railroad Commission from the time of the creation of that commission. By that constitutional provision municipalities were divested of all power over rates. That article provided that from the time of the passage by the legislature of laws conferring power upon the Railroad Commission respecting

public utilities, all powers respecting such utilities vesting in boards of supervisors or municipal councils of the several cities in the State should cease so far as such powers might conflict with the powers conferred upon the Railroad Commission, provided that the section should not affect such powers of control over public utilities as relate to the making and enforcement of local and police regulations "other than the fixing of rates vested in a city;" and provided, further, that where any such city shall have elected to continue any of its powers to make and enforce such local regulations other than the fixing of rates, it might thereafter by a vote of its qualified electors surrender such powers to [fol. 497] the Railroad Commission; and provided, further, that the section of the Constitution referred to should not affect the right of any city to grant franchises for public utilities upon the terms and conditions and in the manner prescribed by law. Section 497 of the Civil Code of California of 1891, page 121, provides that authority to lay railroad tracks through streets of a city could be obtained for a term of years not exceeding fifty, from the council under such restrictions and limitations and upon such terms as the City may provide. By the Franchise Act of 1893 (Cal. Stat. 1893, p. 288), a franchise to construct or operate railroads upon any public street of a city or to exercise any other privilege proposed to be granted by the common council, shall be granted upon the conditions of that act and not otherwise. We perceive no provision in that act by which power is given to the city over rates to be included in any franchise granted. The statute of 1901, page 265, and its amendments provided that municipalities could grant franchises upon the conditions in the act provided and not otherwise, but there were no words expressly delegating power to a city to fix rates by contract, and as said by the Supreme Court in Home Tel. & Tel. Co. vs. City of Los Angeles, 211 U. S. 265, the first section of the act contained "an emphatic caution against reading into the act any conditions" not clearly expressed in the act itself. No decisions of the Supreme Court of the state directly decide the question, and we pass it, merely saying that we are inclined to the view that in the absence of an express grant to the city of power to fix binding rates in franchises, no such power exists: nor can it be implied under the lan-

guage of the act of 1901, or other statutes called to our attention. (Stanislaus County vs. San Joaquin and K. R. Canal Co., 192 U. S. 200; City of San Antonio vs. San Antonio Public Service Co. 255 U. S. 547; San Francisco Oak-
[fol. 498] land Terminal Co. vs. City of Alameda, 226 Fed. 889; Knoxville Gas Co. vs. City of Knoxville, 261 Fed. 283.) It is perfectly clear, we think, that at least since the adoption of the constitutional provision heretofore cited, any provision with respect to rates in franchises granted since 1914 could not be considered as binding contracts of inviolable nature.

Denny vs. Pacific Tel. and Tel. Co., — U. S. —, (decided Feb. 20, 1928) involved an order of the Department of Public Works of Washington finding that existing rates charged by the Telephone Company were just, fair and reasonable and that certain proposed increased rates were unjust, unfair and unreasonable and that the application for increased rates should be denied. The Court stated that the Department of Public Works had made its investigation without regard to the franchise rates which designated maximum permissible rates, thus disregarding the contention that the franchise rates were contractual and therefore could not be confiscatory in a constitutional sense. The Court affirmed the view of the Supreme Court of the state, that the questions presented were unaffected by the franchise rates, and held that the public body had the power to fix reasonable and compensatory rates irrespective of any previous municipal action.

We prefer to rest our decision upon the ground that even upon the assumption that the city had power to fix the utility rate by contract and that the rate provisions contained in the franchises granted to plaintiff did constitute contracts, nevertheless, the rates specified in the provisions of the franchises have been changed by the exercise of the police power of the state. It appears that in 1921 the Com-
[fol. 499] mission granted plaintiff company authority to increase its rates over the basic five cent fare which was then in force. There were in force and effect at that time 102 out of 116 franchises granted to plaintiff or its predecessors. Since May, 1921, fourteen other franchises have been granted. When the Commission in 1921 made its order changing the basic five cent fare, it authorized plaintiff to

file with the Commission and put into effect thirty days from the date of the order, a schedule of rates increasing the then-present basic fare of five cents to six cents, and directed that tickets or token be put on sale. That plaintiff company did not avail itself of the right to the increase does not affect the fact that the Commission exercised its exclusive jurisdiction to regulate rates by making and finding that the rates provided for in the franchise granted to plaintiff were inadequate, and that the six cents fare authorized was a just rate. The Commission in its decision said:

"If adequate street railway service is to be given in Los Angeles, there appears to be no possibility for the company to secure the necessary revenue under a continuation of the flat 5-cent fare. An increase in the fare in some form, we are satisfied, should be authorized if street railway service is not to suffer and great injury is not to result to the development of the city." (19 C. R. C. 999.)

The order authorized the company to put into effect within thirty (30) days from the date of the order as chedule of rates increasing the basis 5-cent fare to 6 cents, provided that tickets or tokens be put on sale at the company's offices, on the company's cars, and at such points as the company may select, in blocks of ten (10) tickets or tokens at a total cost of 50 cents for each block; and provided further that the single 6-cent fare, as also the reduced rate ticket or token far, shall retain transfer privileges as then in existence.

[fol. 500] Furthermore, we are of opinion that the proceeding before the Railroad Commission (No. 13323) out of which the present suit grew, must be held to have been a complete exercise by the Commission of its power over the rate specified in the franchises granted to plaintiff. How could it be otherwise? The Commission received and considered original nad supplemental applications for an increase made by plaintiff. It carried on an extensive investigation lasting from November, 1926, until March, 1928, when it made its finding that the five cent fare allowed to plaintiff was not an unreasonable return, and that under that rate and the method of operation for the year ending December 31, 1927, the return was approximately 4.9 per

cent. The finding of the Commission rested upon detailed figures concerning the valuation of plaintiff's property. The practical result of the conclusion and order of the Commission was to prevent the company from obtaining a fair return upon its property invested in the public service. Its order was none the less effective in denying permission to raise an existing rate inasmuch as the necessary effect was to enforce the existing rate, which would effect confiscation of plaintiff's property (Miss. R. R. vs. M. & O. R. R., 244 U. S. 388).

We, therefore, hold that the denial of permission to raise the existing rate, followed as it was and is by the necessary effect of enforcing the rate, was an exercise of jurisdiction and that a situation was created wherein the power of the federal court to enjoin, if confiscation is effected by the order, is ample.

Let us briefly look at the facts as set forth in the pleadings and the exhibits made parts thereof, which included the evidence before the Commission.

[fol. 501] We accept as a criterion the rule approved in Smythe vs. Ames, 169, U. S. 466, that the basis of all calculations as to the reasonableness of rates to be charged by a carrier such as plaintiff is, must be the fair value of the property being used by it for the convenience of the public, and that in finding such value, among the principal proper elements to be considered are "original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present, as compared with the original, cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses." Those elements together with amounts to pay taxes and proper operating charges and any going concern value that there may be, are essential to be considered in arriving at a conclusion upon the all important question whether the carrier is enjoying a fair return upon the value of the property employed by it for public convenience. What, therefore, was established as the reasonable value at the time of the investigation by the Commission, and what may be taken to be such value for a reasonable time in the immediate future? (San Diego

Land Co. vs. Jasper, 189 U. S. 439; McCardle vs. Indianapolis Co. 272 U. S. 400.)

Expert evidence in plaintiff's behalf, based in large part upon the inventory and values made by concurrent action heretofore mentioned in 1923 and 1925, computed the total values as of December 31, 1926, and December 31, 1927, as follows:

For 1926

Reproduction cost new less depreciation, straight line basis, $45,217,653; Reproduction cost new less depreciation—70% condition, $46,129,344; Historical reproduction cost, $49,240,186.

[fol. 502] For 1927

Reproduction cost new less depreciation, straight line basis, $46,231,320; Reproduction cost new less depreciation condition 70%, $47,137,864; Historical reproduction cost, $50,435,823. Items included in the valuations are operative physical property, capital expenditures called for during the eighteen months following the dates of the valuation working capital, and a going value. The defendant Commission filed an affidavit made by one of the engineers (Cooper) who had had long and varied experience in making valuations of public utilities and had participated in the so-called joint report of valuations from 1923 to 1925, which was before the Commission in the rate proceeding respecting rates of the plaintiff carrier (application 13323). His computations vary from those made by plaintiff's witnesses. He put the value at $41,914,052 and included allowance for material, supplies and future capital expenditures, based upon historical reproduction cost, which included estimated market value of the land as of the date of the valuation, plus the estimated cost of the other physical property at the time of the installation of the various items, plus overhead expenditures for engineering, law, interest and similar charges. In his estimate he took $42,000,000 as the highest figure to be accepted as a rate basis, and calculated the net income and per cent return derived from the

operation of plaintiff's street railway and bus system from 1922 to 1926 as follows:

Years	Net income	Per cent return
1922	$3,043,669	9.7
1923	3,278,232	9.4
1924	2,879,307	7.4
1925	2,090,910	5.2
1926	1,910,466	4.6

It is true that during the argument plaintiff vigorously contended that the Commission failed to give due weight [fol. 503] to the evidence before it as to depreciation of plaintiff's various properties, and that it adopted an arbitrary historical reproduction cost estimate as of December 31, 1926, wherein there was no inclusion of allowances for working capital, going concern, development cost, or adequate allowances for interest during a reasonable construction period—contentions which appear to be justified, at least in part, by the evidence of Mr. Cooper produced before the Commission, to the effect that in his grand totals he had not included working capital, going concern value, nor additional capital required, but had merely covered physical properties as of December 31, 1926. But, in denying plaintiff's petition for rehearing the Commission expressly stated that in reaching its conclusion as to a fair rate basis figure it had considered all the evidence and claims of value and had made a fair allowance for "claimed intangible elements of value in the light of all the surrounding circumstances," and added that a fair allowance for reproduction costs new less depreciation would "with fair allowance for all intangible items" amount to a sum less than that found as a rate basis. It is to be regretted that the Commission did not go into particulars in its reference to the wide variation in the estimates before it pertaining to the intangible items. However that may be, we need not enter into a detailed inquiry whether or not the Commission included all of the items which Mr. Cooper says he did not consider, or any of them, as among the elements of value, or whether such items or any of them were essential in arriving at a fair value of the property, for the theory upon which the defendant rests its contentions is that the Commission did consider all of the proper factors in exercising its judg-

ment as to the fair value of the property for rate making purposes. With that understanding, we stated to counsel [fol. 504] upon the argument our general view that the analysis of facts and figures made by plaintiff was not sufficiently persuasive to compel a conclusion that the Commission had erred by omitting to give consideration and due weight to the factors which fundamentally enter into an ascertainment of the value of the property. Since the case has been submitted and we have studied the record we now hold that the findings of the Commission fixing the rate basis at $42,000,000 must stand. These findings were in effect that the financial results of the operation of plaintiff's property under the operating methods in use for the year 1927, based upon the estimates which were before the Commission were as follows: Total operating revenues $13,-254,000; Total operating expenses including depreciation computed on five percent sinking fund basis and taxes, $11,183,739, leaving net income available for return, $2,070,-261. It also found that the rate of return under the fares and methods of operation of the year 1927 was approximately 4.9 per cent. Now, if we take operating expense allowance for depreciation as made by the engineers of the Commission, computed on the same basis as the computation for the deduction of accrued depreciation from the value of the property, the following table illustrates the fare required to produce sufficient revenue to meet total cost of service, including return of not exceeding eight per cent on the value of operative property as fixed by the Commission for say one year next after the rates go into effect:

(a) Minimum operating expenses, exclusive of depreciation and taxes, for first year after new rate takes effect	$10,274,760
(b) Operating expense of depreciation as estimated by Commission's chief engineer, A. G. Mott, and assistant engineer, J. E. Cooper	1,556,917
(c) Taxes	1,229,686
[fol. 505]	
(d) Total operating expense, not including return (items a, b and c)	13,061,363
(e) Total cost of service, including 8% return	16,421,363

(f) Gross revenue estimated to be produced by straight 7¢ fare, without reduced tickets or tokens	16,031,171
(g) Straight 7¢ fare will produce net income available for return of (f-d)	2,969,808
(h) Plaintiff's estimated income other than for transportation	130,000
(i) Total net income available for return under straight 7¢ fare (item g plus h)	3,099,808
(j) Total net income under straight 7¢ fare will fall short of producing full 8% return on $42,000,000 by	260,192
(k) The total net income available for return under straight 7¢ fare (i) is equal to a rate of return	7.38%

Obviously, by use of tokens as applied for by plaintiff in its application, the net income available for return will be considerably less.

We do not believe there is merit in the suggestion that there is discrimination asked, in that the estimates of value included in plaintiff's statements comprehend bus operations which showed a loss for the year 1926. The complaint treats the plaintiff's public utility as a "street railroad corporation" operating a "unified passenger transportation system" consisting of double and single track railway and motor bus lines, etc., and in the rate base of $42,000,000 in the Commission's decision and order there was included all of the property of the plaintiff company devoted to its bus operations. It is evident that the Commission treated the property of plaintiff devoted to its bus operations as entitled to be considered in any rate base finding of value.

Our conclusion is that plaintiff has shown very clearly that the finding of the Commission that the present rate is [fol. 506] fair and reasonable is not supported by the evidence before the Commission, and that plaintiff's property is being confiscated, and that our power should be used to afford relief, N. P. vs. Dept. Public Works, 268 U. S. 39.

Let the injunction issue, with order that plaintiff company issue a refund coupon to all patrons paying fare, and that it give bond in the sum of $50,000.00 to be approved by the judges, providing that if it shall ultimately be held that the new rate is unlawful, the excess repre-

sented by the coupon will be refunded upon presentation of the coupon.

Counsel may submit form of injunctive order.

[File endorsement omitted.]

[fol. 506-a1] IN UNITED STATES DISTRICT COURT

In Equity. No. N 115-J

LOS ANGELES RAILWAY CORPORATION, A Corporation, Plaintiff,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, Defendant; CITY OF LOS ANGELES, Intervenor

DECREE ALLOWING INJUNCTION

This cause came on to be heard at this term upon the motion of plaintiff for an interlocutory and a permanent injunction, the Judge of this Court having called to his assistance the Hon. William H. Hunt, Circuit Judge of this Circuit, and the Hon. William H. Sawtelle, District Judge of the District of Arizona, in accordance with the statute; and proofs having been filed and due notice having been given of such motion to the Governor and Attorney General of the State of California, as required by statute as well as to defendant and the intervenor herein; and the verified Bill of Complaint, and the respective Answers, Motions to Strike and Motions to Dismiss of defendant Railroad Commission and of Intervenor—defendant City of Los Angeles, and affidavits submitted by the parties having been read; and the verified transcript of all the evidence introduced in the proceeding (Application No. 13323) before the Railroad Commission of the State of California, which culminated in the order of that Commission (Decision and [fol. 506-a2] Order No. 19521) entered on March 26, 1928, hereinafter mentioned, having been offered in evidence and filed herein, and the arguments of counsel for the respective parties heard; and it having been stipulated by the parties that the entire matter should be finally deter-

mined on this hearing on the merits; and the Court having considered said Bill of Complaint and the respective Answers, Motions to Strike and Motions to Dismiss of defendant Railroad Commission and of intervenor—defendant City of Los Angeles, and the affidavits, transcript and arguments, and being of the opinion that the plaintiff is entitled to relief herein;

It is by this court, constituted as provided by Section 380 United States Code,

Ordered, adjudged and decreed as follows:

That the defendant, Railroad Commission of the State of California, and its members, officers, agents, attorneys, servants and employees, and any and every person acting or claiming, assuming or attempting to act under and by virtue of the authority of said Commission, and that the City of Los Angeles, and its officers, attorneys, agents, servants and employees, and any and all other persons, associations or corporations, municipal or otherwise, who now or shall hereafter seek or attempt to enforce Decision and Order No. 19521 of the Railroad Commission of the State of California, dated March 26, 1928, or plaintiff's existing rates of fare, be and they are hereby restrained and enjoined:

From enforcing or attempting to enforce, or from advising, instituting, prosecuting or aiding in any action, suit or proceeding under the laws of the State of California, or otherwise, to enforce, said Decision and Order No. 19521 or plaintiff's present basic five (5) cent fares as set forth in Exhibit H attached to the Amended Bill of Complaint herein against plaintiff or otherwise, or against any of the officers, agents or employees of plaintiff or any of them; or

From taking any steps or proceedings whatsoever under or pursuant to or by virtue of said Decision and Order No. 19521 or otherwise, or from advising, instituting, prosecuting or aiding any action, suit or proceeding of any kind or character under the laws of the State of California, or [fol. 506-a3] otherwise, to recover from or impose upon or enforce against plaintiff or any of its officers, agents, or employees or any of them, any fine, penalty, damages, or demand for failure or refusal to obey, observe or comply with said Decision and Order No. 19521, or for failure to

charge and/or collect plaintiff's present basic five (5) cent fares as set forth in Exhibit H attached to the Amended Bill of Complaint herein; or

From interfering in any way with the rights of the plaintiff established by the decree herein.

It is further ordered that until final determination of this cause by the United States Supreme Court—

(1) Plaintiff shall from and after the entry of this injunction order, charge and/or collect rates of fare on its street railway system not in excess of a basic fare of seven (7) cents, cash, or four (4) single fare tokens, for twenty-five (25) cents all as set forth in Exhibit G attached to the Amended Bill of Complaint herein, and shall issue to each passenger paying such fares a refund ticket or coupon for the excess between the present rates of fare and the rate of fare paid by such passenger;

(2) That plaintiff shall file with the Clerk of this Court, in form and tenor first approved by the Judges of this Court, a good and sufficient bond of a surety company or companies in the sum of Fifty Thousand Dollars ($50,000), conditioned that if it shall ultimately be held by the Supreme Court of the United States that the new rates are unlawful, the excess represented by the refund tickets or coupons will be refunded by plaintiff upon presentation of the coupons. If it shall appear at any time hereafter that such bond affords inadequate protection, an application will be entertained by this Court for further indemnity.

Let the writ of injunction issue in accordance herewith.
—— ——, Circuit Judge. —— ——, District Judge.
—— ——, District Judge.

Approved as to form, as provided in Rule No. 44.
—— ——, Attorney for Defendant, Railroad Commission of the State of California. —— ——, Attorney for Intervenor, City of Los Angeles.

[fol. 507] IN UNITED STATES DISTRICT COURT

[Title omitted]

REASONS FOR NON-APPROVAL AND OBJECTIONS OF THE DEFENDANT RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, AND OF INTERVENOR-DEFENDANT CITY OF LOS ANGELES, STATE OF CALIFORNIA, TO THE FORM OR DECREE ALLOWING INJUNCTION AND FORM OF INJUNCTION SUBMITTED BY PLAINTIFF UNDER EQUITY RULE 44

I

On Page Two (2) of the proposed "Decree Allowing Injunction," lines twenty-two (22) and twenty-three (23), there should be stricken the following words: "or plaintiff's existing rates of fare."

II

On Page Two (2) of the proposed "decree Allowing Injunction", in the Paragraph commencing on line twenty-four (24) and ending on line twenty-eight (28), there should be stricken the following words: "or plaintiff's present basic five (5) cent fares as set forth in Exhibit H attached to the Amended Bill of Complaint herein."

III

In the Paragraph commencing on line twenty-nine (29) Page Two (2), and ending on line five (5), Page Three (3) of the proposed "Decree Allowing Injunction", there should be stricken the following words: "or for failure to [fol. 508] charge and/or collect plaintiff's present basic five (5) cent fares as set forth in Exhibit H attached to the Amended Bill of Complaint herein."

IV

On Page Three (3) of the proposed "Decree Allowing Injunction", in the Paragraph commencing on line nine (9) and ending on line fourteen (14), there is a reference to a certain Exhibit G purported to have been attached to the plaintiff's Amended Bill of Complaint herein. Such reference is plainly not proper on account of its uncertainty. A Decree Allowing Injunction should be complete in itself

without reference to other documents or other records. Such a Decree should set forth fully, definitely and completely the rates which the court will allow plaintiff to charge.

V

There is nothing in the proposed "Decree Allowing Injunction" which shows fully, completely and definitely what the existing rates of this plaintiff are. The proposed "Decree Allowing Injunction" provides that a patron of the street railway cars of plaintiff is entitled to recover the excess over the existing rate of fare as compared with the proposed rate of fare, which excess will be represented by a refund ticket or coupon which such patron will receive on payment of the proposed fare. Unless the existing rates are set forth fully, completely and definitely in the Decree itself it cannot be ascertained what this difference will be.

VI

It is the purpose of defendants herein to appeal from the decision of this court to the Supreme Court of the United States. In connection with said appeal defendants will ask [fol. 509] this court for a supersedeas or stay of its Order of Injunction, and in the event that this application is denied we will make a similar application to the United States Supreme Court. We respectfully request of this Honorable Court what we consider to be perfectly reasonable, that is, that the Decree Allowing Injunction and the Injunction be made not effective until other defendants have had full opportunity to obtain a stay from either this court or the United States Supreme Court.

In this connection we urge that the fares mentioned in this court's Decision, and the "refund coupons" provided for in said Decision, be not made effective until we have had the opportunity afforded to the commonest litigant of obtaining from the proper tribunal a stay of this Order. We should add that in a case presenting similar grounds of appeal to this case (Interborough Rapid Transit Co. v. Gilchrist, et al., cited by both plaintiff and defendants herein), the Supreme Court of the United States granted a stay of an injunction issued by the District Court in and for the Southern District of New York. The said case has been ad-

vanced on the Calendar, and comes on for argument on October Second next, at Washington.

We respectfully request therefore, that the following language be inserted following line twenty-one (21) on Page Three (3) of the proposed "Decree Allowing Injunction":

"It is hereby further ordered that the defendant Railroad Commission of the State of California and intervenor-defendant City of Los Angeles have a stay of execution of this Decree — days from and after the entry of same."

VII

The proposed "Injunction" itself is also too broad. The same objections which we have heretofore made in connection with the proposed "Decree Allowing Injunction" ap- [fol. 510] ply equally to the proposed "Injunction". We respectfully request that the proposed "Injunction" be so amended as to conform with the "Decree Allowing Injunction", with such omissions and changes as we have heretofore requested.

Respectfully submitted.

Carl I. Wheat, Reginald L. Vaughan, Roderick B. Cassidy, Solicitors for Defendant Railroad Commission, State Building, San Francisco, California. Jess E. Stephens, City Attorney, and Herman Mohr, Deputy City Attorney, Solicitors for defendant, City of Los Angeles, Fourth Floor, City Hall, Los Angeles, California.

[fol. 511] In United States District Court

[Title omitted]

Reply of Plaintiff to Defendant's and Intervenor's Reasons for Non-Approval and Objections to Plaintiff's Proposed Decree and Injunction

I, II, III, IV, and V

The objections of the Commission and the City as set forth in these paragraphs of their reasons for non-approval of and objections to the form of Decree submitted

by plaintiff are based on the contention that uncertainty results from the various reference in the form of Decree to plaintiff's existing rates of fare and its references therein to Exhibits H and G attached to the Complaint. Plaintiff refuses to accept these suggested corrections on the grounds that there is no merit or reason in them, and that no end, except to encumber the record, could be served by the inclusion in the Decree of the approximately thirty (30) pages of the various schedules of rates set forth in Exhibits H and G. Manifestly, there can be no uncertainty either in the Decree or in th Injunction because of the references therein to Exhibits H and G attached to the Amended Bill of Complaint, and especially is this true since the Commission and the City, against which the Injunction is primarily directed and which in all likelihood are the only parties absolutely necessary to be enjoined, are both thoroughly familiar with, and cognizant of, the rates set forth in said Exhibits H and G. There is not [fol. 512] more reason for setting forth at length in the Decree and the Injunction the entire schedule of rates contained in said Exhibits H and G than there is to set forth therein the complete text of Decision and Order No. 19,521; yet, neither the Commission nor the City suggests or desires that that Decision be set forth at length in the Decree or in the Injunction. Furthermore, plaintiff is prepared to submit to the Court at any time the form of refund tickets proposed to be put into effect when the Injunction is signed, and such refund tickets will show on their face the amount of the refund representing the difference between plaintiff's present rates and the rates authorized by the Decree and Injunction.

VI

Plaintiff rejects the additions suggested in this paragraph of the Commission's and the City's objections, for the reason that the Injunction itself, when signed, will bear its effective date.

Plaintiff, of course, does strenuously oppose the issuance of any supersedeas or stay of the Injunction in this case on the grounds, as we will show at the proper time, that there is no conceivable reason therefor and that the balance

of injury resulting from such a stay would be irreparable to plaintiff. Under the terms of the Decree and Injunction as submitted herewith, neither the Commission nor the City can suffer any possible injury and the public will be amply protected by the bond and refund tickets. On the other hand, should a stay be granted, there is no lawful method whereby the Commission, the City, or the public can protect the plaintiff from the further confiscation of its property under the present rates of fare from the date of such stay until the affirmance of this Court's decision by the United States Supreme Court, a period of perhaps six (6) [fol. 513] months and possibly longer.

Furthermore, as we are advised, the Interborough case, referred to by the Commission and the City, presents on appeal no grounds similar to those existing in the instant case, and the stay issued there establishes no precedent here because the contracts involved in that case are not franchises but lease contracts, whereby the city of New York advanced the cost of construction of the railways and leased them to the plaintiff operating companies, (See pp. 10 to 13, Supplemental Brief In Support of Motion For Interlocutory Injunction, herein), whereas the contract question involved in the instant case is almost identical with that involved in the Muscatine Lighting Co. case, 255 U. S. 539 and in the San Antonio case, 255 U. S. 547, in both of which the ruling of the United States Supreme Court held the franchises not to be contracts.

VII

Plaintiff refuses to accept the suggestions contained in this paragraph of the Commission's and the City's objections, for the reasons and upon the grounds hereinabove under paragraphs I, II, III, IV and V stated.

Respectfully submitted.

Gibson, Dunn & Crutcher, by S. M. Haskins, Solicitors for Plaintiff. Woodward M. Taylor, Paul R. Watkins, of Counsel.

[fol. 514] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO REPLY OF PLAINTIFF TO REASONS FOR NON-APPROVAL AND OBJECTIONS OF THE DEFENDANT RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, AND OF INTERVENOR-DEFENDANT CITY OF LOS ANGELES, STATE OF CALIFORNIA TO THE FORM OF DECREE ALLOWING INJUNCTION AND FORM OF INJUNCTION SUBMITTED BY PLAINTIFF UNDER EQUITY RULE 44

The reply to our objections to and non-approval of the proposed "Decree Allowing Injunction" convinces us that counsel is laboring under a misapprehension relative to the omissions requested by and under Paragraphs numbered I, II and III. These omissions were not intended, nor would they tend, to make more definite and certain the Decree. The point is that their inclusion gives plaintiff more relief than that to which it is justly entitled under the opinion of this court and under the theory of its case. All that the Decree should do is to restrain the Commission from enforcing the rates fixed by and under Decision No. 19521. It is this order which would operate to confiscate the property of plaintiff; therefore, the Decree should be directed against its enforcement rather than against the existing rates of plaintiff. If the Decree were allowed as proposed, it would, we submit, tie the hands of the Railroad Commission to the extent that relief could not be granted to a complaining party, say for instance, the City of Los Angeles, on a proper complaint against rates. It is conceivable that within the near future reasons might present themselves [fol. 515] why the existing rates would be the proper rates to yield a fair return to plaintiff for the use of its properties devoted to public use. The Commission however, under the terms of the Decree, would be violating the same should it entertain a complaint under such circumstances. Furthermore, since service is so interwoven with the question of rates a proper complaint could not be entertained by the Commission relative to service, because it, in effect,

would be a complaint against the rates and therefore a violation of the Injunctive Decree.

Respectfully submitted.

Carl I. Wheat, Reginald L. Vaughan, Roderick B. Cassidy, Solicitors for Defendant Railroad Commission, State Building, San Francisco, California. Jess E. Stephens, City Attorney, and Herman Mohr, Deputy City Attorney, Solicitors for Defendant, City of Los Angeles, Fourth Floor, City Hall, Los Angeles, California.

[fol. 516] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL REPLY OF PLAINTIFF TO DEFENDANT'S AND INTERVENOR'S REASONS FOR NON-APPROVAL AND OBJECTIONS TO PLAINTIFF'S PROPOSED DECREE AND INJUNCTION

Answering the last reason of objections filed by the Commission and the City to the form of Decree and Injunction proposed herein, and which is set forth under paragraphs I, II and III of their objections, plaintiff desires to oppose further the elimination from the proposed Decree and Injunction of the words "Plaintiff's existing rates of fare" and all other matter set forth in said paragraphs I, II and III of defendant's objections, upon the following grounds:

In the first place, the basis of this equitable action is not, as claimed by the Commission and the City, Decision and Order No. 19521 alone; as the complaint and the proofs before this Court clearly show, this action was directed, and relief sought, against plaintiff's present rates of fare as well as against said Decision and order. Obviously, if the Decision and Order, compelling the enforced collection of the present rates is not suported by the evidence before the Commission, as this Court has found, the rates of fare determined by said Decision and Order to be just and reasonable must also have been deemed by the Court to be confiscatory, for the Court has found not only that said Decision and Order is without supporting evidence before

[fol. 517] the Commission but likewise that plaintiff's property is being confiscated. Injunction against the Decision and Order alone would not afford full relief to plaintiff from the confiscatory character of the present rates, for, under the law, plaintiff would then still be compelled to secure the authority of the Commission to charge and collect a compensatory rate. The present rates and the Decision and Order, we submit, must stand or fall together.

Nor is there the slightest force to the Commission's and the City's contention that the Decree and Injunction as proposed would tie the hands of the Commission, foreclose service complaints by the City or close the door to all applications and actions before the Commission involving this utility. The most superficial examination of the enjoining and restraining language of the proposed Decree and Injunction discloses that it is, in the first paragraph, merely directed against the enforcement of the present confiscatory rates; and, in the second paragraph, merely against the imposition by the Commission of fines and penalties against plaintiff for not continuing to charge and collect those confiscatory rates.

Respectfully submitted.

Gibson, Dunn & Crutcher, by S. M. Haskins, Solicitors for Plaintiff. Woodward M. Taylor, Paul R. Watkins, of Counsel.

[fol. 518] In the United States District Court

In Equity No. N 115-J

Los Angeles Railway Corporation, a Corporation, Plaintiff,

vs.

Railroad Commission of the State of California, Defendant; City of Los Angeles, Intervenor

Decree Allowing Injunction

This cause came on to be heard at this term upon the motion of plaintiff for an interlocutory and a permanent

injunction, the Judge of this Court having called to his assistance the Hon. William H. Hunt, Circuit Judge of this Circuit, and the Hon. William H. Sawtelle, District Judge of the District of Arizona, in accordance with the statute; and proofs having been filed and due notice having been given of such motion to the Governor and Attorney General of the State of California, as required by statute as well as to defendant and the intervenor herein; and the verified Bill of Complaint, and the respective Answers, Motions to Strike and Motions to Dismiss of defendant Railroad Commission and intervenor-defendant City of Los Angeles, and affidavits submitted by the parties having been read; and the verified transcript of all the evidence introduced in the proceeding (Application No. 13323) before the Railroad Commission of the State of California which culminated in the order of that Commission (Decision and Order No. 19521) entered on March 26, 1928, [fol. 519] hereinafter mentioned, having been offered in evidence and filed herein, and the arguments of counsel for the respective parties heard, and it having been stipulated by the parties that the entire matter should be finally determined on this hearing on the merits; and the Court having considered said Bill of Complaint, and the respective answers, Motions to Strike and Motions to Dismiss of defendant Railroad Commission and of intervenor-defendant City of Los Angeles, and the affidavits, transcript and arguments, and being of the opinion that the plaintiff is entitled to relief herein;

It is by this Court, constituted as provided by Section 380 United States Code,

Ordered, adjudged and decreed, as follows:

That the defendant, Railroad Commission of the State of California, and its members, officers, agents, attorneys, servants and employees, and any and every person acting or claiming, assuming or attempting to act under and by virtue of the authority of said Commission, and that the City of Los Angeles, and its officers, attorneys, agents, servants and employees, and any and all other persons, associations or corporations, municipal or otherwise, who now or shall hereafter seek or attempt to enforce Decision and Order No. 19521 of the Railroad Commission of the State of California, dated March 26, 1928, or plaintiff's exist-

ing rates of fare, be and they are hereby restrained and enjoined:

From enforcing or attempting to enforce, or from advising, instituting, prosecuting or aiding in any action, suit or proceeding under the laws of the State of California, or otherwise, to enforce said decision and Order No. 19521, or plaintiff's present basic five (5) cent fares as set forth in Exhibit H attached to the Amended Bill of Complaint herein, against plaintiff, or otherwise, or against any of the officers, agents or employees of plaintiff or any of them; or

From taking any steps or proceedings whatsoever under or pursuant to or by virtue of said Decision and Order No. 19521 or otherwise, or from advising, instituting, prosecuting or aiding any action, suit or proceeding of any kind or character under the laws of the state of California, [fol. 520] or otherwise, to recover from or impose upon or enforce against plaintiff or any of its officers, agents, or employees or any of them, any fine, penalty, damages or demand for failure or refusal to obey, observe or comply with said Decision and Order No. 19521, or for failure to charge and/or collect plaintiff's present basic five (5) cent fares as set forth in Exhibit H attached to the Amended Bill of Complaint herein; or

From interfering in any way with the rights of the plaintiff established by the decree herein.

Provided: Nothing herein contained shall be deemed to enjoin the defendant Railroad Commission, or any of its members, attorneys, agents or employees, or to enjoin the defendant the City of Los Angeles, or its officials or attorneys, or agents from future inquiry into possible changed conditions and whether the rates of fare charged by plaintiff are reasonable and just under such possible changed conditions, and from taking such action and making such order as may be proper and lawful in respect thereto.

It is further ordered that until final determination of this cause by the United States Supreme Court.

(1) Plaintiff may, from and after the entry of this injunction order, charge and/or collect rates of fare on its street railway system not in excess of a basic fare of seven

(7) cents cash, or four (4) single fare tokens for twenty-five (25) cents or all as set forth in Exhibit G attached to the Amended Bill of Complaint here, and shall issue to each passenger paying such fares a refund ticket or coupon for the excess between the present rates of fare and the rates of fare paid by such passenger;

(2) That plaintiff shall file with the Clerk of this Court, in form and tenor first approved by the Judges of this court, a good and sufficient bond of a surety company or companies in the sum of Fifty Thousand Dollars ($50,000.), conditioned that if it shall ultimately be held by the Supreme Court of the United States that the new rates are unlawful, the excess represented by the refund tickets or coupons will be refunded by plaintiff upon presentation of the coupons. If it shall appear that at any time hereafter that such bond affords inadequate protection, an application will be entertained by this Court for further indemnity.

Let the writ of injunction issue in accordance herewith. Enforcement of the writ is stayed for a period of ten days.

Wm. H. Hunt, Circuit Judge. Wm. P. James, District Judge. Wm. H. Sawtelle, District Judge.

Approved as to form, as provided in Rule No. 44.

—— ——, Attorney for defendant, Railroad Commission of the State of California. —— ——, Attorney for Intervenor, City of Los Angeles.

Decree entered and recorded Oct. 1, 1928. R. S. Zimmerman, Clerk.

[fol. 520-a1] IN UNITED STATES DISTRICT COURT

In Equity. No. N 115-J

LOS ANGELES RAILWAY CORPORATION, a Corporation, Plaintiff,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, Defendant; CITY OF LOS ANGELES, Intervenor

INJUNCTION—Filed Oct. 19, 1928

The President of the United States, to the Railroad Commission of the State of California, and its members, officers, attorneys, agents, servants and employees, and any and every person acting or claiming, assuming or attempting to act under and by virtue of the authority of said Commission, and to the City of Los Angeles, and its officers, attorneys, agents, servants, and employees, and to any and all other persons, associations or corporations, municipal or otherwise, who now or shall hereafter seek or attempt to enforce Decision and Order No. 19521 of the Railroad Commission of the State of California, dated March 26, 1928, or plaintiff's existing rates of fare, Greeting:

Whereas, it has been represented to us in the District Court of the United States for the Southern District of California, Southern Division, that Decision and Order No. 19521 of the Railroad Commission of the State of California, dated March 26, 1928, is arbitrary and is not supported by the evidence before the Commission, and that plaintiff's present basic five (5) cent fares as set forth in Exhibit H attached to the Amended Bill of Complaint herein are confiscatory, and that said Decision and Order and said present rates of fare have the effect of taking, without just compensation, the property of plaintiff devoted to public use, and of depriving plaintiff of that property without due process of law, and of denying to plaintiff the equal protection of the law under the Fourteenth Amendment to the Constitution of the United States

[fol. 520-a2] Now, therefore, you, the said Railroad Commission of the State of California, and your members, officers, attorneys, agents, servants and employees, and any and every person acting or claiming, assuming or attempting to act under and by virtue of the authority of said Commission, and you the said City of Los Angeles, and your officers, attorneys, agents, servants and employees, and any and all other persons, associations or corporations, municipal or otherwise, who now or shall hereafter seek or attempt to enforce said Decision and Order No. 19521, of the Railroad Commission of the State of California, or plaintiff's said present rates of fare, are strictly commanded and enjoined under the pains and penalties which may fall upon you and each of you upon disobedience, that you and each of you desist and refrain:

From enforcing or attempting to enforce, or from advising, instituting, prosecuting or aiding in any action, suit or proceeding under the laws of the State of California, or otherwise, to enforce, said Decision and Order No. 19521 or plaintiff's present basic five (5) cent fares as set forth in Exhibit H attached to the Amended Bill of Complaint herein, against plaintiff or otherwise, or against any of the officers, agents or employees of plaintiff or any of them; or

From taking any steps or proceedings whatsoever under or pursuant to or by virtue of said Decision and Order No. 19521 or otherwise, or from advising, instituting, prosecuting or aiding any action, suit or proceeding of any kind or character under the laws of the State of California, or otherwise, to recover from or impose upon or enforce against plaintiff or any of its officers, agents, or employees or any of them, any fine, penalty, damages or demand for failure or refusal to obey, observe or comply with said Decision and Order No. 19521, or for failure to charge and/or collect plaintiff's present basic five (5) cent fare as set forth in Exhibit H attached to the Amended Bill of Complaint herein; or

From interfering in any way with the rights of the plaintiff established by the decree herein.

Provided: Nothing herein contained shall be deemed to enjoin the defendant Railroad Commision or any of its members, attorneys, agents or employees, or to enjoin the defendant the City of Los Angeles, or its officials, or at-

torneys or agents from future inquiry into possible changed conditions, and from taking such action and making such order as may be proper and lawful in respect thereto.

[fol. 520-a3] This injunction is granted upon condition that, until final determination of this cause by the United States Supreme Court—

(1) Plaintiff may, from and after the entry of this injunction order, charge and/or collect rates of fare on its street railway system not in excess of a basic fare of seven (7) cents cash or four (4) single fare tokens for twenty-five (25) cents all as set forth in Exhibit G attached to the Amended Bill of Complaint herein, and shall issue to each passenger paying such fares a refund ticket or coupon for the excess between said present rates of fare and the rate of fare paid by such passenger;

(2) That plaintiff shall file with the Clerk of this Court, in form and tenor first approved by the Judges of this Court, a good and sufficient bond of a surety company or companies in the sum of Fifty Thousand Dollars ($50,000.), conditioned that if it shall ultimately be held by the Supreme Court of the United States that the new rates are unlawful, the excess represented by the refund tickets or coupons will be refunded by plaintiff upon presentation of the coupons. If it shall appear at any time hereafter that such bond affords inadequate protection, an application will be entertained by this Court for further indemnity.

Witness the Hon. William H. Hunt, Judge of the Circuit Court of Appeals for the Ninth Circuit, and the Hon. William P. James, Judge of the District Court of the United States for the Southern District of California, and the Hon. William H. Sawtelle, Judge of the District Court of the United States for the District of Arizona, this 1st day of October, one thousand nine hundred twenty-eight, and in the one hundred fifty third year of the Independence of the United States of America.

(Seal) R. S. Zimmerman, R. S. Zimmerman, Clerk.

[fol. 520-a4] Return on Service of Writ

UNITED STATES OF AMERICA,
Northern District of California, ss:

I hereby certify and return that I served the annexed Injunction on the therein-named Railroad Commission of the State of California by handing to and leaving a true and correct copy thereof with Fred N. Bigelow, Asst. Secty. R. R. Commi-on of the State of California personally at S. F. in said District on the 18th day of Oct. 1928.

Fred L. Esola, U. S. Marshal, by W. J. Ferguson, Deputy.

Return on Service of Writ

UNITED STATES OF AMERICA,
Southern District of California, ss:

I hereby certify and return that I served the annexed Injunction on the therein-named City of Los Angeles by handing to and leaving a true and correct copy thereof with George Cryer, Mayor, City of Los Angeles personally at Los Angeles in said District on the 16th day of October, A. D. 1928.

A. C. Sittel, U. S. Marshal, by M. J. Finn, Deputy.

[fol. 521] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed Oct. 2, 1928

The above named defendant, Railroad Commission of the State of California, and Intervener-Defendant City of Los Angeles, conceiving themselves aggrieved by the "Decree Allowing Injunction", of the above entitled Court, heretofore made and entered on the 1st day of October, 1928, in the above entitled cause, do hereby appeal from said Decree to the Supreme Court of the United States for the reasons specified in the Assignment of Errors, which is filed herewith, and pray that this appeal may be allowed, and that citation be issued as provided by law, and that a transcript of the records, proceedings and documents upon

which said Decree was based, duly authenticated, be transferred to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

[fol. 522] Said defendant and said intervener-defendant further pray that proper Order be made relating to the security to be required of them.

Dated October 2, 1928.

Carl I. Wheat, Reginald L. Vaughan, Roderick B. Cassidy, Solicitors for Defendant Railroad Commission. Jess E. Stephens, City Attorney, Herman Mohr, Deputy City Attorney, Solicitors for Intervener, Defendant, City of Los Angeles.

[fol. 523] Due service and a receipt of a copy of the within Petition is hereby admitted this 2nd day of October, 1928.

Gibson, Dunn & Crutcher, by S. M. Haskins.

[File endorsement omitted.]

[fol. 524] In United States District Court

[Title omitted]

Order Allowing Appeal—Filed Oct. 2, 1928

The above named defendant, Railroad Commission of the State of California, and the above named intervener-defendant, City of Los Angeles, having prayed for an allowance of an appeal in the above entitled cause to the Supreme Court of the United States from the Decree made and entered by the above named Court on the 1st day of October, 1928, and from each and every part thereof, and having presented and filed their Assignment of Errors pursuant to the statutes and rules of said Court in such cases made and provided:

It is hereby ordered that citation be issued as provided by law and that a transcript of the records, proceedings and papers upon which said Decree was based, duly authenticated, be transferred to the Supreme Court of the United States under the rules of said Court in such cases made and provided;

[fol. 525] And it is hereby further ordered that security for costs on appeal be fixed in the sum of Five Hundred ($500.00) Dollars.

Dated October 2, 1928.

Wm. P. James, United States District Judge.

[fol. 526] Due service and a receipt of copy of the within Order is hereby admitted this 2nd day of October.

Gibson, Dunn & Crutcher, by S. M. Haskins.

[File endorsement omitted.]

[fols. 527 & 528] Citation, in usual form, showing service on Gibson, Dunn & Crutcher, filed October 2, 1928, omitted in printing.

[fols. 529-534] Bonds on Appeal for $500.00 approved and filed October 2, 1928, omitted in printing.

[fol. 535] In United States District Court

[Title omitted]

Assignment of Errors—Filed Oct. 2, 1928

Come now the Railroad Commission of the State of California, defendant, and the City of Los Angeles, Intervener-defendant, and in connection with their petition for appeal herein present this assignment of errors, and they, and each of them, say that in the record and proceedings in the above-entitled cause there is manifest error, and that the above-entitled court, specially constituted under the terms and provisions of Section 380, United States Code Annotated (section 266 of the Judicial Code) erred in the making of its opinion, orders and decrees, and particularly in the granting of the injunction against the defendant, Railroad Commission, and the Intervener-defendant, City of Los Angeles, and each of them, in the following particulars, to-wit:

I

The Court erred in making the Decree.

[fol. 536] II

The Court erred in granting the Injunction.

III

The Court erred in making the Decree and in overruling the respective Motions to Dismiss interposed by defendant Railroad Commission and Intervener-defendant City of Los Angeles, for the reason that the relief asked in the Amended Bill of Complaint herein is beyond the power and jurisdiction of the said Court to grant.

IV

The Court erred in making the Decree and in holding that the allegations of the first alleged cause of action in said Amended Bill of Complaint stated a cause of action or raised any federal question over which it had or has jurisdiction, for the reason that said alleged cause of action attacks only the present effective rates of fare in force upon Plaintiff's street railway system and fixed in the franchises sold to Plaintiff by the City, and does not attack any order or act of the Railroad Commission fixing any fare or fares to be charged by Plaintiff.

V

The Court erred in making the Decree and in holding that the allegations of the second alleged cause of action in said Amended Bill of Complaint stated a cause of action or raised any federal question over which it had jurisdiction, for the reason that the said alleged cause of action does not attack any order or act of the Railroad Commission changing or modifying in any manner the rates of fare fixed and established in and by the franchises sold to Plaintiff by the City of Los Angeles.

[fol. 537] VI

The Court erred in making the Decree and in fixing and/or allowing the charge and collection by Plaintiff of rates of fare greater than and different from those fixed and established in and by the franchise-contracts entered into and existing between Plaintiff and Intervener-defendant City of Los Angeles, and in failing to hold that Plaintiff was and is bound by all of the terms and provisions of said franchises, including the provisions for rates of fare, for the reason that said Court did not and does not now possess jurisdiction to change or vary the said rates of fare so fixed and established.

VII

The Court erred in making the Decree and in finding and/or holding that defendant Railroad Commission, either in and by its Decision and Order No. 9029, or otherwise, has ever acted to change the basic five-cent fare in force upon Plaintiff's street railway system, for the reason that the record herein discloses upon its face that said Decision and Order never did and never has become an effective decision and order of said Commission, and was and is ineffectual for any purpose whatsoever, and further for the reason that the record discloses upon its face that the Railroad Commission has never made, issued or promulgated any order, decision or rule changing the rates of fare upon Plaintiff's street railway system.

VIII

The Court erred in making the Decree and in failing to hold that Plaintiff entered into valid and binding contracts with the City of Los Angeles when it purchased its franchises and filed approved bonds for the faithful performance of all terms thereof.

[fol. 538] IX

The Court erred in granting the Decree and in failing to hold that Plaintiff is bound by the rate provisions in each of its franchises purchased from the City unless or until

said provision should be changed by lawful and effective order of the Railroad Commission; and in failing to hold that Plaintiff under and by its said franchise-contracts limited itself to charging a basic five-cent fare, subject to change only by the police power of the State, as a part of its consideration for the grant to it of the right to operate a street railroad on the streets of said City.

X

The Court erred in making the Decree and in finding and holding that Defendant Railroad Commission had or has acted to change, alter or affect the rates fixed in and by the franchise-contracts, or any of them, entered into and existing between Plaintiff and the City of Los Angeles.

XI

The Court erred in making the Decree and in finding and holding that a failure and refusal by Defendant Railroad Commission to change the rates fixed in and by the franchise-contracts entered into and existing between Plaintiff and the City, either by its Decision and Order No. 19,521, or otherwise, is either a complete or any exercise of that Commission's power over the rates specified in said franchises, for the reason that such failure and refusal to change said rates did not and could not operate to affect said rates, or any of them, in any manner, or to give the said Court jurisdiction thereover.

[fol. 539] XII

The Court erred in making the Decree and in finding and holding that the denial by Defendant Railroad Commission of Plaintiff's Application (No. 13,323) for authority to increase its rates of fare constituted such action or any action with regard to said rates as to give to said Court any jurisdiction or authority over said rates.

XIII

The Court erred in making the Decree and in finding and holding that the denial by Defendant Railroad Commis-

sion, of the application of Plaintiff for increased rates in the proceedings which resulted in the prosecution of this cause "followed as it was and is by the necessary effect of enforcing the rate, was an exercise of jurisdiction and that a situation was created wherein the power of the Federal Court to enjoin, if confiscation is effected by the order, is ample," for the reason that no action was or has been taken by Defendant Railroad Commission, which would operate to change or alter any of the rates fixed in and by the franchise-contracts entered into and existing between Plaintiff and the City of Los Angeles.

XIV

The Court erred in making the Decree and in holding that the Federal Court may exercise or force the exercise of the police power of a state either to change the terms of or to abrogate the franchises sold to Plaintiff by the City of Los Angeles, or otherwise.

XV

The Court erred in making the Decree and in holding, upon the evidence before it, that the present rates of fare [fol. 540] upon Plaintiff's street railway system do not produce a lawful, proper and non-confiscatory return upon the fair value of Plaintiff's property devoted to the public use.

XVI

The Court erred in making the Decree and in fixing or purporting to fix or establish any rate or rates to be charged and/or collected by Plaintiff.

XVII

The Court erred in making the Decree and in finding and holding that the decision and order of Defendant, Railroad Commission, No. 19,521 operates to confiscate Plaintiff's property, for the reason that the record before said Court discloses upon its face that no property of Plaintiff is or would be taken without due process of law, or without the equal protection of the laws, or in deprivation of life, lib-

erty or property either in violation of the Fifth or Fourteenth Amendments to the Federal Constitution, by the enforcement of said order.

XVIII

The Court erred in making the Decree and in constituting itself a rate-making body by its action of fixing rates and by changing the differential and/or differentials in rates applicable to and between different classes of patrons, for the reason that said Court was and is limited in its jurisdiction to grant relief against confiscation, and did not possess and does not now possess any rate-making power or powers.

XIX

The Court erred in making the Decree and in finding and holding that no discrimination would result from increas- [fol. 541] ing the street railway fares on Plaintiff's system without changing the auto bus fares from their present existing level, for the reason that such action is an attempt by said Court to determine questions of patron classification and rate differentials over which it did not possess and does not now possess power or jurisdiction, and for the further reason that the result of such action is unlawfully to compel the street railway patrons of Plaintiff to make up deficits accruing from the auto-bus branch of Plaintiff's operations.

XX

The Court erred in making the decree and in failing and/or refusing to find the sum which would be necessary for the plaintiff to receive as a "fair return" from the use of its street railway properties by the public.

XXI

The Court erred in making the Decree and in finding and holding that a return of "not exceeding eight per cent on the value of operative properties as fixed by the Commission" is proper and lawful, for the reason that a return of eight per cent on the value of the operative prop-

erties as fixed by the Commission is, and would be, unfair, unjust, unlawful and greatly in excess of that return to which Plaintiff is entitled under the provisions of the Federal Constitution, and each of the same.

XXII

The Court erred in making the Decree and in failing and/or refusing to find and hold that the financial history and structure of Plaintiff discloses no cause for the denial of an injunction therein, for the reason that the record before said Court discloses upon its face that the financial history and structure of Plaintiff are such that it is not, and will not be, necessary to increase its rates in order to [fol. 542] allow Plaintiff to realize a fair return upon the fair value of its street railway properties devoted by it to public use.

XXIII

The Court erred in making the Decree and in failing and/or refusing to find that flat fare increases upon Plaintiff's street railway system are not proper, just or fair, for the reason that the record before said Court discloses upon its face that such flat fare increases are unjust, improper, unfair and unnecessary in order to allow Plaintiff to realize a fair return upon the fair value of its street railway properties devoted by it to *by* public use.

XXIV

The Court erred in making the Decree and in finding and holding that the rate of return received by Plaintiff during a single year is sufficient evidence upon which to support a finding that the properties of Plaintiff are being, or will be, confiscated, for the reason that the record before said Court discloses upon its face that over and during a reasonable period of years in the immediate past Plaintiff has, and during such a reasonable period of years in the immediate future Plaintiff can and will earn a fair return upon the fair value of the properties devoted by it to public use under its present and existing fares.

XXV

The Court erred in making a Decree and in rendering a decision which is contrary both to law and to the evidence, for the reason that the record before the Court discloses that Plaintiff, over a reasonable period of time will earn and receive a fair return on the fair value of the property devoted by it to public use upon and under its present existing rates of fare.

[fol. 543] XXVI

The Court erred in making the Decree and in failing and/or refusing to give cognizance or weight to the finding of the Railroad Commission, upon the evidence before it and before this Court, to the effect that economies could be effected upon Plaintiff's system which would unquestionably return to it a fair return upon the properties devoted by it to the public use under and upon its present existing rates of fare.

XXVII

The Court erred in making the Decree and in failing and/or refusing to find that the methods employed by the Plaintiff in the management and operation of its street railway properties might and could be so changed as to result in large reductions in the cost of operations and maintenance, thereby enabling Plaintiff to render efficient and adequate service and to receive a fair return upon the fair value of such properties under its existing rates, for the reason that the record before said Court discloses upon its face, without contradiction, that such economies could be made, and that such results would if such economies were effected.

XXVIII

The Court erred in making the Decree and in failing and/or refusing to find that the operative methods of this Plaintiff might be so changed as to result in large reductions in the cost of operation and still enable the Plaintiff to render efficient and adequate service and receive a full and adequate return upon a rate base of $42,000,000 under its present rates, for the reason that the record discloses

without contradiction that such economies may be made and that such a result would follow, and in failing and/or refusing to find, as did the Railroad Commission, that the [fol. 544] record shows that the operating methods of the Company might be so changed as to result in large reductions in cost of operation and still enable the Company to render efficient and adequate service. The management of the Company has made no effort to take advantage of these possible economies which, if made effective, would result in the Company receiving an unquestionably full and adequate return on the rate base heretofore named, to-wit: the sum of $42,000,000. By reason of these facts, the rates of fare now charged by said Company are not unreasonable, for the reason that the record herein upon said matter is uncontradicted.

XXIX

The Court erred in making a Decree which is so broad as to give to Plaintiff greater relief than that which was requested by it in its Amended Bill of Complaint, which, by its terms, is beyond the issues framed by the pleadings herein, and which is not justified by any allegation or prayer contained in the Amended Bill of Complaint herein.

XXX

The Court erred in making a Decree which, by its terms, is so broad as to be indefinite, uncertain and uncomprehensible, and which does not apprise defendant, Railroad Commission, and Intervenor-defendant, City of Los Angeles, of what acts are enjoined and what acts are permitted.

XXXI

The Court erred in making a Decree which was uncertain, and incomplete, for the reason that it refers to two purported Exhibits stated to be attached to the Amended Bill of Complaint herein and does not set forth definitely and in extenso the act or acts which are enjoined; and which is not complete in and of itself and for which reason [fol. 545] is violative of the rule that an injunction must show upon its face what acts the party, against whom the

same is directed, is enjoined from performing or committing.

XXXII

The Court erred in making a Decree which is not supported by the evidence or record before it.

XXXIII

The Court erred in making a Decree which does not set forth the return which Plaintiff is to be allowed to obtain under its Opinion herein.

XXXIV

The Court erred in making a Decree which does not set forth or state what services are to be rendered in exchange for a "basic fare of seven (7) cents, or a single fare of six and one-quarter (6¼) cents on a four (4) for twenty-five (25) cents basis.

XXXV

The Court erred in making a Decree which, in effect, constitutes an exercise of the police power of the State of California.

XXXVI

The Court erred in making the Decree and in allowing Plaintiff to charge increased rates of fare upon its street-railway system pending appeal to the United States Supreme Court and providing only for the giving of "refund coupons" to those of its patrons who pay such increased rates for the excess paid over its present rates, for the reason that such refund coupons do not constitute fair, reasonable or proper protection to its said patrons for such excess fares so paid.

[fol. 546] XXXVII

The Court erred in making the Decree and in accepting as a basis therefor certain estimates and calculations regarding the probable result of increased rates which dis-

close upon their face that they did not include proper items for operation expenses and for depreciation when considered upon the accepted rate-base of $42,000.00 and in not considering for the purpose of said estimates and calculations the calculations and estimates presented by the Railroad Commission.

XXXVIII

The Court erred in granting an injunction which is not complete in and of itself and violative of the rule that an injunction must be so clear that any one reading the same may know what acts he is enjoined from performing or committing.

XXXIX

The Court erred in failing and refusing to give proper or any weight to the following testimony constituting a portion of Exhibit "G" being a transcript of the testimony taken and adduced by defendant the Railroad Commission of the State of California, to-wit: All that portion of said testimony given by the witness A. G. Mott to the point of savings in operation which might be effected by one-man car operation and as to the adequacy, safety and reasonableness of such service.

Further, the Court erred in disregarding the testimony of the witness Ball contained in affidavit, filed with the Court to the effect that Plaintiff's income for the year 1927 did not represent a permanent diminution in revenue, but [fol. 547] on the contrary constituted but a temporary slump.

Carl I. Wheat, Reginald L. Vaughan, Roderick B. Cassidy, Solicitors for Defendant, Railroad Commission of the State of California, State Building, San Francisco, California. Jess E. Stephens, City Attorney, and Herman Mohr, Deputy City Attorney, Solicitors for Intervener-Defendant, City of Los Angeles, City Hall, Los Angeles, California.

[File endorsement omitted.]

[fol. 548] In United States District Court

Order Extending Time

[Title omitted]

Good cause appearing therefor, it is hereby ordered that the time within which to file the record and docket the above entitled cause in the Supreme Court of the United States be and the same is hereby extended to and including January 3, 1929.

(Signed) William P. James, United States District Judge.

[fol. 549] Office of the Clerk, Supreme Court of the United States, Washington, D. C.

November 27, 1928.

R. S. Zimmerman, Esq., Clerk U. S. District Court, Los Angeles, Calif.

Dear Sir: I have received and filed order extending the time within which to file the record and docket the cause in the case of Railroad Commission of the State of California, and City of Los Angeles, Appellants, v. Los Angeles Railway Corporation, Appellee, to and including the 3rd of February, 1929, which reached me with your letter of the 21st instant.

Yours truly, Charles Elmore Cropley, Clerk, by Reginald Robertson, Assistant.

A.

Filed Dec. 31, 1928. R. S. Zimmerman, Clerk. By M. D. Gaines, Deputy Clerk.

[fol. 550] In United States District Court

[Title omitted]

Order Extending Time

Good cause appearing therefor it is hereby ordered that the time within which to file the record and docket the above-entitled cause in the Supreme Court of the United States be and the same is hereby extended to and including March 3rd, 1929.

(Signed) Wm. P. James, United States District Judge.

[fol. 551] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME

Good cause appearing therefor, it is hereby ordered that the time within which to file the record and docket the above entitled cause in the Supreme Court of the United States be and the same is hereby extended to and including April 15th, 1929.

Los Angeles, Cal., February 13th, 1929.

Wm. P. James, U. S. District Judge.

[fols. 552-554] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 555] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY AND DESIGNATION AS TO PRINTING—Filed April 1, 1928

Come now the Appellants and adopt their Assignment of Errors as their statement of the points to be relied upon and represent that the whole of the record, as filed, is necessary for the consideration of the case.

This statement is filed in accordance with Paragraph 9 of Rule 13 of the Rules of the above named Court.

Dated this 20 day of March, 1929.

Arthur T. George, Ira H. Rowell, Roderick B. Cassidy, Attorneys for Appellant, Railroad Commission of the State of California. Jess E. Stephens, H. Wallace Mohr, J. L. Ronnow, Attorneys for Appellant, City of Los Angeles.

[fol. 556] Due service and receipt of a copy of the within Statement of Points on which Appellants Intend to Rely

and Designation as to printing of Record is hereby admitted this 20th day of March, 1929.

Woodward M. Taylor, Gibson, Dunn & Cruther, by S. M. Harkins, Attorneys for Appellee. Paul R. Watkins, Herbert F. Sturdy, of Counsel.

[File endorsement omitted.]

Endorsed on cover: File No. 34,110. S. California D. C. U. S. Term No. 801. The Railroad Commission of the State of California and the City of Los Angeles, appellants, vs. Los Angeles Railway Corporation. Filed April 1st, 1929. File No. 34,110.

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APR 20 1
CHARLES ELMORE

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1928

No. 60

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and THE CITY OF LOS ANGELES,
Appellants,

vs.

LOS ANGELES RAILWAY CORPORATION (a corporation),
Appellee.

MOTION TO ADVANCE CAUSE.

ARTHUR T. GEORGE,
IRA H. ROWELL,
RODERICK B. CASSIDY,
State Building, San Francisco,
Attorneys for Appellant, Railroad Commission of the State of California.

JESS E. STEPHENS,
HERMAN MOHR,
JAMES L. RONNOW,
City Hall, Los Angeles,
Attorneys for Appellant, City of Los Angeles.

GIBSON, DUNN & CRUTCHER,
WOODWARD M. TAYLOR,
Merchants National Bank Building, Los Angeles,
Attorneys for Appellee.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1928

No. 801

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and THE CITY OF LOS ANGELES, *Appellants,*

vs.

LOS ANGELES RAILWAY CORPORATION (a corporation), *Appellee.*

MOTION TO ADVANCE CAUSE.

All parties herein, Railroad Commission of the State of California, City of Los Angeles, and Los Angeles Railway Corporation, join in moving this Honorable Court to advance this cause for hearing as near the beginning of the October Term of 1929 as may be convenient. In support of this motion, and in accordance with the requirements of Subdivision 3 of Rule 20 of the Rules of this Honorable Court, the following brief statement of the matter involved and

of the reasons for this application are respectfully submitted.

FACTS AND ISSUES.

The appellee Los Angeles Railway Corporation is a public utility street railroad corporation operating in the City of Los Angeles and adjacent territory. On November 17, 1926, appellee filed with appellant Railroad Commission an application for increase in its rates from the then prevailing flat rate of five cents to a basic fare of seven cents cash or four single fare tokens for twenty-five cents. After conducting exhaustive hearing, appellant Railroad Commission issued its order No. 19,521 denying the application for rate increase, and on April 23, 1928, the Commission denied the Company's application for a rehearing on said order No. 19,521.

Thereafter on June 22, 1928, appellee filed with the District Court of the United States in and for the Southern District of California, Southern Division, a bill of complaint against appellant Railroad Commission praying that the existing five cent fare be declared confiscatory, that said Commission order No. 19,521 be declared void, that said Commission and its officers be enjoined from enforcing or attempting to enforce said order, and for certain other general relief. Upon the filing of said complaint, motion was made by appellee for interlocutory injunction under United States Code, Title 28, Section 380 (formerly 266 Judicial Code). In the bill of complaint and motion it was urged that the then prevailing five cent rate was con-

fiscatory and that said order of the Commission denying the rate increase deprived appellee of its property without due process of law in violation of the Fourteenth Amendment to the Federal Constitution.

The City of Los Angeles, on motion duly made, was permitted to intervene in said proceeding as party defendant. Both defendants, City of Los Angeles and Railroad Commission of California, thereupon moved to dismiss said bill of complaint for want of equity, and for various other reasons. Separate answers were filed by said defendants denying all material allegations, and affirmatively alleging that plaintiff company was operating under certain franchises granted by the City and County of Los Angeles, wherein the rate of fare was fixed at five cents per ride; that the said franchises constituted contracts binding upon said plaintiff, and that said Federal Court was without jurisdiction to grant the relief sought.

Thereafter the said District Court, constituted as provided by United States Code, Title 28, Section 380, heard said matters and evidence was introduced by all parties. At the conclusion of said hearing it was stipulated by all parties that the Court, in addition to ruling on said motions, might finally determine all issues involved in the action on the record then before it. Thereafter the said statutory three judge Court issued its opinion, and on October 1, 1928, issued its decree allowing permanent injunction. In said opinion the Court found the said order of the Railroad Commission to be void on the ground that it deprived plaintiff of its property without due process of law in

violation of the Fourteenth Amendment to the Federal Constitution, and on that ground issued its permanent injunction enjoining the enforcement of said Commission order.

As a condition of the injunction the Court in its decree authorized plaintiff from and after the entry of the injunction, and until final determination of the cause by the United States Supreme Court, to charge and collect not in excess of a basic fare of seven cents cash or four single fare tokens for twenty-five cents, all as prayed for in the bill of complaint of plaintiff, and directed that plaintiff issue to each passenger paying such fares a refund ticket or coupon for the excess between the former five cent fare and the rate of fare paid by such passenger. Under said decree the plaintiff was required to file with the Clerk of the Court a surety bond in the amount of $50,000 conditioned that if it should ultimately be held by the Supreme Court of the United States that the new rates are unlawful, the excess represented by refund tickets or coupons will be refunded by plaintiff upon presentation of such coupons.

Defendants and appellants filed with said Court petition for appeal on October 2nd, 1928, and on said date order issued allowing appeal. Bonds on appeal, and a joint assignment of errors were filed by appellants on October 2nd, 1928.

On appeal appellants will urge that the District Court erred in the various particulars enumerated in the assignment of errors.

The time within which to file the record and docket the cause in the Supreme Court of the United States was extended from time to time by the Federal District Court until April 15, 1929. On April 1st, the record in the matter was filed and docketed by the Clerk of this Honorable Court.

Pursuant to the requirements of Subdivision 9 of Rule 13 of the Rules of this Honorable Court, appellants filed with the Clerk of the Court on April 1st, 1929, designation of points intended to be relied upon, and parts of the record to be printed. Appellants have prepared the jurisdictional statement required by Rule 12 of the Rules of Court, and will file the same with the Clerk of Court prior to the filing of this motion to advance. Appellee Los Angeles Railway Corporation concedes that this Court is vested of jurisdiction to review the decree challenged by the appeal, and represents that prior to the filing of this motion to advance, will file with the Clerk of Court an express waiver of right to file statement in opposition to jurisdiction (Subdivisions 2 and 3 of Rule 12).

GENERAL PUBLIC INTEREST.

The questions presented on this appeal are of vital interest to all parties to this proceeding, and to the citizens of the City of Los Angeles and Southern California. Between nine hundred thousand and one million passengers a day are carried over the lines of appellee Los Angeles Railway Corporation. By virtue of the decree in question the said company is now, and

at all times since October 21, 1928, has been collecting the increased rates authorized by the said decree of the Federal District Court. If said decree is reversed those passengers who have paid the increased fares will have refunded to them the difference between the increased fares and the five cent fare, and if said decree is affirmed the Company will be at liberty to use the additional revenue derived from the increased fares. It is evident that the public interest will be subserved by an early hearing of this appeal by this Honorable Court.

By reason of the existing public interest in this appeal we respectfully join in asking that this cause be advanced for hearing.

Dated, April 17, 1929.

ARTHUR T. GEORGE,
IRA H. ROWELL,
RODERICK B. CASSIDY,
Attorneys for Appellant, Railroad Commission of the State of California.

JESS E. STEPHENS,
HERMAN MOHR,
JAMES L. RONNOW,
Attorneys for Appellant, City of Los Angeles.

GIBSON, DUNN & CRUTCHER,
WOODWARD M. TAYLOR,
Attorneys for Appellee.

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APR 20
CHARLES ELMOR

In the Supreme Court OF THE United States

OCTOBER TERM, 1928

No. 60

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and THE CITY OF LOS ANGELES, *Appellants,*

vs.

LOS ANGELES RAILWAY CORPORATION (a corporation), *Appellee.*

STATEMENT OF APPELLANTS RESPECTING JURISDICTION OF COURT TO REVIEW DECREE INVOLVED HEREIN

and

WAIVER OF APPELLEE OF RIGHT TO FILE STATEMENT IN OPPOSITION TO JURISDICTION.

ARTHUR T. GEORGE,
IRA H. RCWELL,
RODERICK B. CASSIDY,
State Building, San Francisco,
Attorneys for Appellant, Railroad Commission of the State of California.

JESS E. STEPHENS,
HERMAN MOHR,
JAMES L. RONNOW,
City Hall, Los Angeles,
Attorneys for Appellant, City of Los Angeles.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1928

No. 801

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and THE CITY OF LOS ANGELES,
Appellants,

vs.

LOS ANGELES RAILWAY CORPORATION (a corporation),
Appellee.

STATEMENT OF APPELLANTS RESPECTING JURISDICTION OF COURT TO REVIEW DECREE INVOLVED HEREIN.

Pursuant to Paragraph 1 of Rule 12 of this Court, appellants present the following statement as to the basis on which this Court has jurisdiction to review the opinion and decree of the District Court of the United States in and for the Southern District of California, Southern Division, involved herein.

A. REFERENCE TO STATUTORY PROVISION SUSTAINING JURISDICTION.

The direct appeal, which is here taken, is authorized by United States Code, Title 28, Section 380 (formerly Judicial Code Section 266). The appeal is from a decree allowing permanent injunction issued by a three judge statutory Court pursuant to proceedings had under said United States Code, Title 28, Section 380.[1]

B. REFERENCE TO OPINION AND DECREE OF COURT SOUGHT TO BE REVIEWED.

The opinion of the District Court (R. 487-506) was filed on September 10, 1928, and the decree allowing injunction (R. 518-520) was entered and recorded on October 1, 1928. Application for appeal (R. 521-522) was filed by appellants on October 2, 1928, and on said date an order allowing appeal was issued and filed. (R. 524-525.) The time within which to file the record and docket the cause in the Supreme Court of the United States was extended from time to time until April 15, 1929. (R. 548-551.)

C. STATEMENT OF NATURE OF CASE SHOWING IT TO BE WITHIN JURISDICTIONAL PROVISION RELIED UPON.

California Railroad Commission was created under the California Constitution, and is vested with power

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(1) (Formerly Judicial Code, Sec. 266), June 18, 1910, c. 309, sec. 17, 36 Stat. 557; Mar. 3, 1911, c. 231, sec. 266, 36 Stat. 1162; Mar. 4, 1913, c. 160, 37 Stat. 1013; Feb. 13, 1925, c. 229, sec. 1, 43 Stat. 938.

and authority to regulate rates and practices of public utilities operating in that state.[2]

The appellee, Los Angeles Railway Corporation, is a public utility street railroad corporation operating in the City of Los Angeles and adjacent territory. On November 17, 1926, appellee filed with appellant Railroad Commission an application for increase in its rates (R. 81-123) from the then prevailing flat rate of five (5) cents to a rate of seven (7) cents with four (4) tokens for twenty-five (25) cents. After conducting exhaustive hearings the appellant Railroad Commission issued its Order 19,521 denying the application, and made the following findings of fact (R. 163):

> "1. That a reasonable rate base to be used for the purpose of computing a fair return upon the operative property of this Company is the sum of forty-two million dollars ($42,000,000).
>
> "2. That the financial results from the operation of applicant's property, under present operating methods. for the year 1927, based upon estimates contained in the record, may be fairly stated as follows:
>
> Total Operating Revenues, $13,254,000.
>
> Total Operating Expense, including depreciation, computed on a 5% sinking fund basis, and taxes, $11,183,739.
>
> Net income available for return, $2,070,261.
>
> "3. That the average annual rate of return earned by applicant for the five-year period ending December 31st, 1926, has been approximately 7.1%.

(2) California Constitution of 1879, as amended by Section 22, Article XII (amendment adopted October 10, 1911); Section 23, Article XII (amendment adopted November 3, 1914); Public Utilities Act of California, California Statutes 1911, Extra Session, Ch. 14, reenacted California Statutes 1915, Ch. 91.

"4. That the rate of return earned by applicant under existing fares and methods of operation for the year ending December 31st, 1927, was approximately 4.9%.

"5. The record shows that the operating methods of the Company might be so changed as to result in large reductions in the cost of operation and still enable the Company to render efficient and adequate service. The management of the Company has made no effort to take advantage of these possible economies which, if made effective, would result in the Company receiving a full and adequate return on the rate base heretofore named, to-wit: the sum of forty-two million dollars ($42,000,000). By reason of these facts, the rates of fare now charged by said Company are not unreasonable.

"6. That the schedule of fares applied for by applicant, to-wit: a seven (7) cent cash fare with four (4) single fare tokens for twenty-five (25) cents, may be reasonably expected to produce a gross revenue of approximately fifteen million seven hundred and eight thousand dollars ($15,708,000), and will, if permitted, produce a net annual return of 9.4 per cent upon the above rate base and the rates applied for, therefore, if put into effect, would be unjust and unreasonable."

Thereafter, appellee filed with appellant Commission an application for rehearing (R. 169) of its said Order 19,521, which application was denied by the Commission by its Order 19,657. (R. 183.) On June 22, 1928, appellee filed with the District Court of the United States in and for the Southern District of California, Southern Division, a bill of complaint against appellant Commission praying that the existing five (5) cent fare be declared confiscatory, that said Commission Order 19,521 be declared void, that said Commission and its officers be enjoined from

enforcing or attempting to enforce said order and for certain other relief. (R. 8-77.) At the same time motion was made by appellee for interlocutory injunction under United States Code, Title 28, Section 380 (formerly 266 Judicial Code). (R. 224.) In the bill of complaint and motion it was urged that the said order of the Commission deprived appellee of its property without due process of law in violation of the Fourteenth Amendment to the Federal Constitution.

The City of Los Angeles, on motion duly made, was permitted to intervene in said proceeding as party defendant. (R. 228-231.) Both defendants, City of Los Angeles and Railroad Commission of California thereupon moved to dismiss said bill of complaint for want of equity, and for other reasons enumerated in said motions. (R. 237-252.) Separate answers were filed by said defendants denying all material allegations (R. 253-328), and affirmatively alleging that plaintiff company was operating under certain franchises granted by the City, and County of Los Angeles, wherein the rate of fare was fixed at five (5) cents per ride, and that the said franchises constituted contracts binding upon said plaintiff, and that said Federal Court was without jurisdiction to grant the relief sought. (R. 281; 291-299.)

Thereafter, the Court, constituted as provided by United States Code, Title 28, Section 380, heard said matters and evidence was introduced by all parties. At the conclusion of said hearing it was stipulated by all parties that the Court, in addition to ruling on said motions, might finally determine all issues in-

volved in the action on the record then before it. (R. 480-482.) Thereafter the said statutory three judge Court issued its opinion (R. 488-506), and on October 1, 1928, issued its decree allowing permanent injunction. (R. 518-520.) In said opinion the Court found the said order of the Railroad Commission to be void on the ground that it deprived plaintiff of its property without due process of law in violation of the Fourteenth Amendment to the Federal Constitution, and on that ground issued its permanent injunction enjoining the enforcement of said Commission order.

Defendants and appellants filed with said Court petition for appeal on October 2, 1928, and on said date order issued allowing appeal (R. 521-525), and bonds on appeal were filed by appellants. (R. 529-534.) Assignment of Errors of appellants was filed on October 2, 1928. (R. 535-547.)

On appeal appellants will urge that the District Court erred in the various particulars enumerated in the Assignment of Errors, and will particularly urge the following points:

1. The Court erred in the issuance of its decree in permitting appellee to charge a rate of fare in excess of the five (5) cent rate fixed in the various franchises granted to appellee by appellant City of Los Angeles. The specifications of error of the Court with reference to the various franchise contracts are set forth in Assignments IV to XIV, inclusive. (R. 536-539.)

2. The Court erred in making its decree and holding that the then existing rates were confiscatory and

in holding that the order of the Railroad Commission, No. 19,521, operates to confiscate plaintiff's property. Assignment of Errors, Paragraphs XV, XVI and XVII. (R. 539-540.)

3. The Court erred in making the decree, and in constituting itself a rate making body by its action of fixing rates and by changing the differential and/or differentials in rates applicable to and between different classes of patrons, for the reason that said Court was, and is limited in its jurisdiction to grant relief against confiscation, and did not possess and does not now possess any rate making power or powers. Errors of the Court in this regard are set forth in Paragraphs XVIII and XIX of Assignment of Errors. (R. 540-541.)

4. The Court erred in making the decree and in holding that the rate of return received by plaintiff during a single year is sufficient evidence upon which to support a finding that the properties of plaintiff are being. or will be confiscated, for the reason that the record before said Court discloses, upon its face, that over and during a reasonable period of years in the immediate past, plaintiff has, and during such a reasonable period of years in the immediate future, plaintiff can and will earn a fair return upon the fair value of the properties devoted by it to public use under its present existing fares. Paragraphs XXIV and XXV, Assignment of Errors. (R. 542.)

5. The Court erred in making the decree and failing to find that the method provided by plaintiff in the management and operation of its street railway

properties might, and could be so changed as to result in large reductions in the cost of operations and maintenance thereby enabling plaintiff to render efficient and adequate service and to immediately receive a fair return upon the fair value of such properties under its existing rates. Paragraphs XXVI, XXVII and XXVIII Assignment of Errors. (R. 543-544.)

6. The Court erred in finding and holding that a rate of return of "not exceeding 8% on the value of operative properties as fixed by the Commission" is proper and lawful, for the reason that a return of 8% on the value of operative properties as fixed by the Commission is unjust and unfair and in excess of the return to which appellee is entitled under the Federal Constitution. Paragraphs XX and XXI Assignment of Errors. (R. 541.)

D. CITATION OF DECISIONS SUSTAINING JURISDICTION.

The following decisions sustain the jurisdiction of this Court to review on direct appeal a final decree granting permanent injunction under United States Code, Title 28, Section 380 (formerly Section 266 Judicial Code):

Arkansas Railroad Commission v. Chicago R. I. P. R. R. Co., 274 U. S. 596, 71 L. Ed. 1224;

In re Wm. Buder, 271 U. S. 462, 70 L. Ed. 1036;

Will Moore v. Fidelity & Deposit Co., et al., 272 U. S. 317, 71 L. Ed. 273;

R. B. Morris v. Wm. Duby, 274 U. S. 135, 71 L. Ed. 966;

Andrew G. Patterson v. Mobile Gas Co., 271 U. S. 131, 70 L. Ed. 870.

All references made herein to the record in this case are to the pages thereof numbered by numbering machine.

Dated, April 17, 1929.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1928

No. 801

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and THE CITY OF LOS ANGELES,
Appellants,

vs.

LOS ANGELES RAILWAY CORPORATION (a corporation),
Appellee.

WAIVER OF APPELLEE OF RIGHT TO FILE STATEMENT IN OPPOSITION TO JURISDICTION.

Appellee, Los Angeles Railway Corporation, hereby expressly waives the right to file a statement in opposition to the above jurisdictional statement as contemplated by Subdivisions 2 and 3 of Rule 12, and hereby concedes the jurisdiction of the United States Supreme Court to review on appeal the judgment or decree below.

GIBSON, DUNN & CRUTCHER,
WOODWARD M. TAYLOR,
Attorneys for Appellee.

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1929.

No. 60.

The Railroad Commission of the State of California, and the City of Los Angeles, a municipal corporation,
Appellants,

vs.

Los Angeles Railway Corporation, a corporation,
Appellee.

BRIEF ON BEHALF OF APPELLANT, CITY OF LOS ANGELES.

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Parker, Stone & Baird Co., Printers, Los Angeles.

TOPICAL INDEX.

PAGE

Statement of the Case 4

Specification of Assigned Errors to Be Urged 8

Argument 12

I.

The Franchises in Question Are Contracts 12

II.

The City Had Power to Enter Into Such Contracts, Including the Fixing of Maximum Charges 24

III.

It Is Immaterial That a Rate for Public Service Fixed by Valid Contract Between a Municipal Corporation and a Public Service Corporation May Be Confiscatory 38

IV.

The Public Utility Can Seek No Relief From the Courts Unless It Secures a Change of the Franchise Rates by Order of the State Railroad Commission 39

V.

There Was No Change From the Contract or Franchise Rate to a Statutory or Legislative Rate Due to the Orders of the Railroad Commission, Either

(a) Under the May, 1921, Application and Order (Decision No. 9029); or,

(b) Under the March 26, 1928, Decision and Order (No. 19,521) 43

VI.

The Absence of California Decisions Upholding the Power of the City to Contract With Reference to Rates Is Immaterial 55

Conclusion 56

TABLE OF CASES.

PAGE

Augusta-Aiken Ry. & Elec. Corp. v. R. R. Comm., 281 Fed. 977 34
City of Albany v. U. S. Fid. & Guar. Co., 38 Cal. App. 466..... 22
City of Denver v. Stenger, 277 Fed. 865..... 36
City of Manitowoc v. Manitowoc etc. Traction Co., 145 Wis. 13, 129 N. W. 925.....40, 54
City of Opelika v. Opelika Sewer Co., 265 U. S. 215, 68 L. Ed. 985 .....25, 27, 36
City of San Diego v. Kerckhoff, 49 Cal. App. 473..... 22
Cleveland v. Cleveland City Ry. Co., 194 U. S. 517..... 38
Columbus Ry. Co. v. City of Columbus, 294 U. S. 399, 63 L. Ed. 669 .....25, 38
Denney v. Pac. Telephone & Tel. Co. (1928), 276 U. S. 97, 72 L. Ed. 483..... 34
Detroit v. Detroit etc. Ry. Co., 184 U. S. 368..... 39
Henderson Water Co. v. Corp. Comm., 269 U. S. 278, 70 L. Ed. 273 .....39, 40, 50
Henrici v. South Feather Land etc. Co., 177 Cal. 442..... 52
Lenawee County Gas & E. Co. v. City of Adrian, 209 Mich. 52, 176 N. W. 590.....41, 50, 51
Los Angeles Ry. Co. v. City of Los Angeles, 152 Cal. 242..... 23
Madera Water Works v. City of Madera, 185 Fed. 281..... 22
Milwaukee Elec. Ry. v. Wis. R. R. Comm., 238 U. S. 174.....40, 54, 55
Miss. R. R. Comm. v. Mobile & Ohio R. R. Co., 244 U. S. 388, 61 L. Ed. 1216..... 34
Monroe v. Detroit M. & T. Shortline R. Co., 187 Mich. 364, 153 N. W. 669.....43, 52
Moorehead v. Union Light, Heat & Power Co. (District Court), 255 Fed. 920 51
Muscatine Lighting Co. v. City of Muscatine, 255 U. S. 539, 65 L. Ed. 764..... 34
Pacific Telephone & Tel. Co. v. Whitcomb, 12 Fed. (2d) 279.... 42, 50, 51
Salt Lake City v. Utah L. & T. Co., 173 Pac. 556..... 53
San Antonio Traction Co. v. San Antonio Pub. Serv. Co., 255 U. S. 547, 65 L. Ed. 777..... 34

PAGE

Smith v. Ill. Bell Tel. Co., 270 U. S. 587, 70 L. Ed. 747 34
Southern Pac. Co. v. Spring Valley Water Co., 173 Cal. 291 53
Southern Utilities Co. v. City of Palatka, 268 U. S. 232, 69 L. Ed. 930 ..... 41, 51
St. Cloud Pub. Serv. Co. v. City of St. Cloud, 265 U. S. 352, 68 L. Ed. 1050 ..... 21, 27, 38
St. Helena v. San Francisco, etc. Ry., 24 Cal. App. 71 22
Title Guar. etc. Co. v. R. R. Comm., 168 Cal. 295, 142 Pac. 878 15
Travers City v. Mich. R. R. Comm., 168 N. W. 481 53
Water Light & Power Co. v. City of Hot Springs, 274 Fed. 827 33

AUTHORITIES CITED.

Alabama State Constitution, Section 2 26
Art. XII, Sec. 23, as amended Nov. 3, 1914 ..... 15, 37, 57
California Constitution, Art. I, Sec. 21 ..... 26, 36
Civil Code, Section 501 15
Civil Code, Sec. 501 32
Civil Code, Section 501, as amended in 1903 32
Public Utilities Act, Sec. 15 48
Public Utilities Act, Sec. 17 48
Public Utilities Act, Sec. 18 48
Public Utilities Act, Sec. 27 48
Public Utilities Act, Sec. 63 48
State Constitution, Section 2 of Article I, numbered 25, p. 994 .. 17
State Constitution, Article XII, Sections 22 and 23 14
Stats. of 1903, p. 172 15
Stats. 1850, p. 155 16
Stats. 1889, p. 455 16
Stats. 1905, p. 980 ..... 16, 29, 30, 37
Stats. 1911, pp. 2051, 2063 ..... 18, 37
Stats. 1893, p. 288 ..... 19, 37
Stats. 1901, p. 265 ..... 20, 37
Stats. 1905, p. 777 ..... 20, 37
Stats. 1909, p. 125 ..... 20, 37
Stats. 1915, p. 1300 ..... 20, 37
Stats. 1891, p. 12—amending Sec. 497 of Civil Code 31, 37
Stats. 1915, p. 115, as amended Deering's Genl. Laws of California, 1923, Vol. II, p. 2683 ..... 48, 57

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1929.

No. 60.

The Railroad Commission of the State of California, and the City of Los Angeles, a municipal corporation,
Appellants,

vs.

Los Angeles Railway Corporation, a corporation,
Appellee.

BRIEF ON BEHALF OF APPELLANT, CITY OF LOS ANGELES.

This case was brought to this court on direct appeal from an opinion and decree allowing permanent injunction issued by the District Court of the United States, in and for the Southern District of California, Southern Division, three judges sitting, pursuant to proceedings had under United States Code, title 28, section 380 (formerly Judicial Code, section 266). Direct appeal from said decree allowing a permanent injunction is expressly authorized by said section of the United States Code.

The opinion of the court is officially reported in 29 Federal Reporter (2nd Series), pages 140-148, and appears in the printed record herein at pages 534-549. The decree allowing injunction and injunction appear in the printed record at pages 559-562 and 563-566, respectively.

Pursuant to paragraph one of rule 12 of this court appellant Railroad Commission of California and appellant City of Los Angeles duly fixed herein their statement as to the basis on which it is contended that this court has jurisdiction to review the opinion and decree herein.

Pursuant to paragraph 9 of rule 13 of this court said appellants duly filed herein a statement of points on which they intend to rely on this appeal [R. 580].

STATEMENT OF THE CASE.

The Los Angeles Railway Corporation, appellee herein, operates its street railway system in the City of Los Angeles under and pursuant to 114 franchises granted to said Company and its predecessor companies by the cities of Los Angeles, Vernon and Huntington Park, and the county of Los Angeles.

The franchises in question were granted between the years 1886 and 1927—all for terms of years varying between 21 and 50 years; four were granted between 1886 and 1891; forty-eight were granted between 1891 and 1905; twenty between 1905 and 1911; seven between 1911 and 1914; and twenty-three between 1914 and 1927 [R. 394 *et seq.*]. There are one hundred and two of these franchises granted now effective, and the summary of their classification [R. 387-388] shows that eighteen were of Class "A," providing that the rate of fare

> "shall not be more than five cents for one continuous ride in the same general direction within the corporate limits of the city, except upon a showing before a competent authority having jurisdiction over rates of fare that such greater charge is justified;"

that there were seventy-three franchises under Class "B," providing

> "that the rate of fare for any distance over said road or its branches, one way, shall not exceed five cents for one passenger;"

that there were five franchises under Class "C," in which no provision was made for any rate of fare; that there were three franchises under Class "D," providing

> "that the rates of fare charged shall not exceed two and one-half cents per mile for any distance, provided, however, that no fare need be less than five cents;"

that there were two franchises under Class "E," providing

> "that the rate of fare for passengers on said railroad shall never exceed ten cents, the said board of supervisors reserving the right to establish at any time a fare not exceeding ten cents and not less than five cents;"

that under Class "F" there was one franchise, providing

> "that the rate of fare for passengers on said railroad shall never exceed three cents per mile."

Certain of these franchises had been granted by the county of Los Angeles prior to the time the territory involved had become annexed to the City [R. 388-396]. Seventy-nine franchises had been granted prior to 1914.

On November 17, 1926, the Railway Company filed with the State Railroad Commission an application for an in-

crease in its rates, as fixed in the various franchises above mentioned, to a basic fare of seven cents cash, or four single-fare tokens for twenty-five cents [R. 75-110]. The Commission, after an exhaustive investigation thereon, on March 26, 1928, issued its Opinion and Order No. 19,521, denying the said application for rate increase [R. 165-175].

The order, in part, provided [R. 168]:

> "It is hereby ordered that the application of the Los Angeles Railway Corporation for increase of its rates of fare in the above-entitled proceeding be, and the same is hereby, denied."

The said rates of fare were the rates of fare governed by the franchises in question, and no change had ever been made by the State Railroad Commission in the franchise rates, although in May, 1921, the Commission had made a permissive order permitting the company to charge six cents, which never became effective.

The 1921 order is not pleaded as such a change by appellee, plaintiff below, nor was it introduced in evidence in the court below. The only reference to it in the record is found in allegation IV of the amended complaint [R. 12]; in the concurring opinion of Commissioner Carr in the 1928 decision and order (No. 19,521) [R. 169]; and in the order dismissing the said application, dated October 25, 1926, setting aside and revoking, at the request of the Railway Company, Decision No. 9029 [R. 349].

We shall discuss this point at length later under its appropriate heading, so for that reason the pleading and evidence are not set forth in full.

On June 22, 1928, the Railway Company filed with the District Court of the United States, in and for the Southern District of California, Southern Division, its bill of complaint against the Railroad Commission of California. Said bill of complaint was amended on June 28, 1928, and sets forth two alleged causes of action [R. 8-234]. By its first cause of action the Company sought to have the court declare confiscatory the five-cent rate of fare which it was permitted to charge under the various franchises granted to it [R. 8-53]; by its second cause of action the Company sought to have declared arbitrary and void the order of the Railroad Commission of California of 1928 (No. 19,521) refusing to increase the basic five-cent rate of fare, on the ground that the Commission did not consider all of the evidence before it and did not make its order with due consideration of the evidence presented to it [R. 53-74]. The City of Los Angeles, on motion duly made, was permitted to intervene in said proceeding as a party-defendant.

Thereafter the said three-judge court, constituted as provided by United States Code, title 28, section 380, issued its opinion [R. 534-549], and on October 1, 1928, issued its decree allowing permanent injunction [R. 559-566]. The court found the basic five-cent fare fixed in the franchises of plaintiff to be confiscatory, and held the order of the Railroad Commission denying the rate increase to be void. As a condition of the injunction the court in its decree authorized plaintiff, from and after the entry of the injunction and until final determination of the cause by the United States Supreme Court, to charge and collect not in excess of a basic fare of seven cents, or four single-fare tokens for twenty-five cents, all as prayed for

in the amended bill of complaint of plaintiff, and directed that plaintiff issue to each passenger paying such fares a refund ticket or coupon for the excess between the former five-cent fare and the rate of fare paid by such passenger [R. 565], pending final determination of the matter by this court.

Specification of Assigned Errors to Be Urged.

Appellant City of Los Angeles urges on this appeal the assignment of errors numbered I to XIV, inclusive [R. 569-572]. The said assignment of errors so specified are as follows:

I.

The court erred in making the decree.

II.

The court erred in granting the injunction.

III.

The court erred in making the decree and in overruling the respective motions to dismiss interposed by defendant Railroad Commission and intervener-defendant City of Los Angeles, for the reason that the relief asked in the amended bill of complaint herein is beyond the power and jurisdiction of the said court to grant.

IV.

The court erred in making the decree and in holding that the allegations of the first alleged cause of action in said amended bill of complaint stated a cause of action or raised any federal question over which it had or has jurisdiction, for the reason that said alleged cause of action attacks only the present effective rates of fare in force upon plaintiff's street railway system and fixed in the franchises sold to plaintiff by the City, and does not attack any order or act of the Railroad

Commission fixing any fare or fares to be charged by plaintiff.

V.

The court erred in making the decree and in holding that the allegations of the second alleged cause of action in said amended bill of complaint stated a cause of action or raised any federal question over which it had jurisdiction, for the reason that the said alleged cause of action does not attack any order or act of the Railroad Commission changing or modifying in any manner the rates of fare fixed and established in and by the franchises sold to plaintiff by the City of Los Angeles.

VI.

The court erred in making the decree and in fixing and/or allowing the charge and collection by plaintiff of rates of fare greater than and different from those fixed and established in and by the franchise-contracts entered into and existing between plaintiff and intervener-defendant City of Los Angeles, and in failing to hold that plaintiff was and is bound by all of the terms and provisions of said franchises, including the provisions for rates of fare, for the reason that said court did not and does not now possess jurisdiction to change or vary the said rates of fare so fixed and established.

VII.

The court erred in making the decree and in finding and/or holding that defendant Railroad Commission, either in and by its Decision and Order No. 9029, or otherwise, has ever acted to change the basic five-cent fare in force upon plaintiff's street railway system, for the reason that the record herein discloses upon its face that said decision and order never did and never has become an effective decision and order of said Commission, and was and is ineffectual for any purpose whatsoever, and further for the reason that

the record discloses upon its face that the Railroad Commission has never made, issued or promulgated any order, decision or rule changing the rates of fare upon plaintiff's street railway system.

VIII.

The court erred in making the decree and in failing to hold that plaintiff entered into valid and binding contracts with the City of Los Angeles when it purchased its franchises and filed approved bonds for the faithful performance of all terms thereof.

IX.

The court erred in granting the decree and in failing to hold that plaintiff is bound by the rate provisions in each of its franchises purchased from the City unless or until said provision should be changed by lawful and effective order of the Railroad Commission; and in failing to hold that plaintiff under and by its said franchise-contracts limited itself to charging a basic five-cent fare, subject to change only by the police power of the state, as a part of its consideration for the grant to it of the right to operate a street railroad on the streets of said City.

X.

The court erred in making the decree and in finding and holding that defendant Railroad Commission had or has acted to change, alter or affect the rates fixed in and by the franchise-contracts, or any of them, entered into and existing between plaintiff and the City of Los Angeles.

XI.

The court erred in making the decree and in finding and holding that a failure and refusal by defendant Railroad Commission to change the rates fixed in and by the franchise-contracts entered into and existing between plaintiff and the City, either by its Decision

and Order No. 19,521, or otherwise, is either a complete or any exercise of that Commission's power over the rates specified in said franchises, for the reason that such failure and refusal to change said rates did not and could not operate to affect said rates, or any of them, in any manner, or to give the said court jurisdiction thereover.

XII.

The court erred in making the decree and in finding and holding that the denial by defendant Railroad Commission of plaintiff's application (No. 13,323) for authority to increase its rates of fare constituted such action or any action with regard to said rates as to give to said court any jurisdiction or authority over said rates.

XIII.

The court erred in making the decree and in finding and holding that the denial by defendant Railroad Commission of the application of plaintiff for increased rates in the proceedings which resulted in the prosecution of this cause "followed as it was and is by the necessary effect of enforcing the rate, was an exercise of jurisdiction and that a situation was created wherein the power of the federal court to enjoin, if confiscation is effected by the order, is ample," for the reason that no action was or has been taken by defendant Railroad Commission, which would operate to change or alter any of the rates fixed in and by the franchise-contracts entered into and existing between plaintiff and the City of Los Angeles.

XIV.

The court erred in making the decree and in holding that the federal court may exercise or force the exercise of the police power of a state either to change the terms of or to abrogate the franchises sold to plaintiff by the City of Los Angeles, or otherwise.

ARGUMENT.

The City relies on the following points in arguing that the court below erred in its decree:

I. The franchises in question are contracts.

II. The City had power to enter into such contracts, including the fixing of maximum charges.

III. It is immaterial that a rate for public service fixed by valid contract between a municipal corporation and a public service corporation may be confiscatory.

IV. The public utility can seek no relief from the courts, unless it secures a change of the franchise rates by order of the State Railroad Commission.

V. There was no change from the contract or franchise rate to a statutory or legislative rate due to the orders of the Railroad Commission, either under the 1921 or 1928 orders.

VI. The absence of California decisions upholding the power of the City to contract with reference to rates is immaterial.

I.

The Franchises in Question Are Contracts.

The franchises themselves exhibit an intention on the part of the parties thereto, namely, the City and the public utility company, to contract. Specimen franchises were introduced in evidence [R. 397-436]. Typical is Franchise Ordinance No. 2532 (N. S.) granted in 1894, providing, in part, as follows [R. 397]:

> "Provided, that in all cases where this franchise is granted over streets now occupied by other lines of

street railway owned by persons or corporations, whether named herein or not, that said W. D. Larabee, and his assigns, shall have the right to operate over any and all such tracks *in accordance with and limited only by the statutes of the state of California applicable thereto;* and in case the gauge of the tracks of said other persons or corporations shall not conform to the gauge of the tracks of said W. D. Larabee, or his assigns, then the said W. D. Larabee, or his assigns, shall be permitted to lay a third rail over the distance traversed by said two roads jointly." (Italics ours.)

"Section 3. *That the rate of fare for any distance along said road or its branches, one way, shall not exceed 5 cents for one passenger,* and shall transfer at connecting points on the lines of said grantee or his assigns or lines which said grantee or his assigns may operate so as not to return passengers in the general direction from which they came, and that persons under eighteen years of age who attend the public schools of said city, shall be required to pay but half fare, provided said pupils shall purchase their tickets in quantities of at least one dollar's worth at a time; such tickets to be available only between the hours of 8 a. m. and 6 p. m., in actual passage to and from school; and said grantee, or assigns, shall sell such tickets whenever requested to do so by a pupil who shall present a certificate from a teacher approved by the Superintendent of Schools of the City, that he or she is such pupil of said schools.

"And, further, that said grantee, or assigns, shall carry policemen and firemen and letter carriers, Mayor and Councilman, free on said cars when on duty, subject at all times to the rules of the road.

"Provided, further, that said grantee, or assigns, shall, on or before December 15th, of each year, pay

to the City Tax and License Collector, the annual license upon each car fixed by the existing ordinances of said city.

"Section 4. The above rights and privileges are granted upon the express condition that work upon that portion known and described as the Kuhrts-Street Line of said road and the line from Estrella Avenue to the west city limits on Washington Street shall be commenced within sixty days, and completed, equipped and in operation as an electric road for its full length within eight months from the date hereof. The remaining portion of said railroad line shall be fully equipped and completed as provided herein within two years from the date of the approval of this ordinance. *Provided, further, that this franchise is granted upon each and every condition herein set forth, and a failure to comply with each or any of said conditions shall work an immediate forfeiture of all the rights herein granted.*

"Section 5. *The said grantee or assigns is hereby required to file a written acceptance of the terms and conditions hereof* with the City Clerk of said City within thirty days after the passage of this ordinance, together with a bond of not less than ten thousand dollars, for the faithful carrying out of the terms of this franchise." (Italics ours.)

Sections 22 and 23, Article XII, of the State Constitution of 1879 originally provided for the creation of the Railroad Commission, but no powers were given it over street railways in municipalities. These sections were amended in 1911, and it was held that the powers of control over existing public utilities which were vested in any city at the time of the adoption of the amendment were still retained by such city and did not pass to the Railroad

Commission until the city, by an election, surrendered these powers to the Commission. (*Title Guar. etc. Co. v. R. R. Comm.*, 168 Cal. 295, 142 Pac. 878.)

So, also, in 1903 (Stats. of 1903, p. 172) section 501 of the Civil Code had been enacted, reading as follows:

> "The rates of fare on the cars must not exceed ten cents for one fare for any distance under three miles, and in municipal corporations of the first class must not exceed five cents for each passenger per trip of any distance in one direction, either going or coming, along any part of the whole length of the road or its connections. The cars must be of the most approved construction for the comfort and convenience of passengers, and provided with brakes to stop the same, when required. A violation of the provisions of this section subjects the corporation to a fine of one hundred dollars for each offense."

On November 3, 1914, section 23 of Article XII of the State Constitution was further amended and regulation over the rates of public utilities was expressly reserved to the Railroad Commission, and municipalities were expressly divested of all power of regulation over rates.

The section, in part, now reads as follows (Art. XII, Sec. 23, as amended Nov. 3, 1914):

> "* * * From and after the passage by the legislature of laws conferring powers upon the Railroad Commission respecting public utilities, all powers respecting such public utilities vested in boards of supervisors, or municipal councils, or other governing bodies of the several counties, cities and counties, cities and towns, in this state, or in any commission created by law and existing at the time

of the passage of such laws, shall cease so far as such powers shall conflict with the powers so conferred upon the Railroad Commission; provided, however, that this section shall not affect such powers of control over public utilities as relate to the making and enforcement of local, police, sanitary and other regulations, other than the fixing of rates, vested in any city and county or incorporated city or town as, at an election to be held pursuant to law, a majority of the qualified electors of such city and county, or incorporated city or town, voting thereon, shall vote to retain, and until such election such powers shall continue unimpaired; but if the vote so taken shall not favor the continuation of such powers they shall thereafter vest in the railroad commission as provided by law; and provided, further, that where any such city and county, or incorporated city or town, shall have elected to continue any of its powers to make and enforce such local, police, sanitary and other regulations, other than the fixing of rates, it may, by vote of a majority of its qualified electors voting thereon, thereafter surrender such powers to the Railroad Commission in the manner prescribed by the legislature; and provided, further, that this section shall not affect the right of any city and county, or incorporated city or town, to grant franchises for public utilities upon the terms and conditions and in the manner prescribed by law. * * *"

Prior to the creation of the Railroad Commission, under the State Constitution the City of Los Angeles had been granted a charter by the state in 1850. (Stats. 1850, p. 155.) In 1889 a new charter was adopted (Stats. 1889, p. 455), which was amended in 1905 (Stats. 1905, p. 980), adding a new subdivision to sec-

tion 2 of Article I, numbered 25, which read as follows (at p. 994):

"That Section 2 of the charter be amended by adding a subdivision to be numbered (25) and to read as follows:

"(25). No franchise, right or privilege in, on, through, across, under or over any street, avenue, alley, bridge, viaduct or other public place, and no other franchise whatever granted by the city to any corporation, association or individual, shall be granted except by an ordinance passed by vote of two-thirds (2/3) of the whole council, nor for a longer period than twenty-one years. *Such grant and any contract in pursuance thereof* shall provide that at the option of the city, declared not more than three (3) years nor less than six months before the termination of such grant, the plant and property, if any, belonging to or used by the grantee, or his or its successors in interest, in the streets, avenues and other public places shall, at the termination of said grant, upon the payment of a fair valuation thereof, be and become the property of the city; but the grantee shall be entitled to no payment because of any valuation derived from the franchise. Provided, however, that such option shall not be exercised unless at the time of exercising the same the city shall be authorized and empowered to acquire and operate such plant and property. Every grant shall specify the mode of determining any valuation therein provided for and the time and mode of payment, *and shall make adequate provision by way of forfeiture of the grant or otherwise to secure efficiency of public service at reasonable rates and the maintenance of the property in good order throughout the term of the grant.*"

In 1911 the 1905 amendment above quoted was further amended and the city was given express power (Stats. 1911, pp. 2051, 2063):

> *"to fix and determine the rates or compensation to be collected by any person, firm or corporation, for water, gas, electric current, refrigeration, heat, light, power, telephones, telephone service or connections, or the conveyance of passengers or freight, by means of street railway cars, hacks, cabs, or other cars or vehicles for hire,* or for the products of, or service by, any other public utility operated or conducted within the city limits; and to prescribe the character and quality of any public utility service.
>
> "To regulate, subject to the provisions of the constitution of the state of California, the construction and operation of railroads, interurban railroads, street railways, or other means of transportation, conduits, waterworks, and works or plants for the production, transmission or distribution of gas, electricity, heat, refrigeration or power, and the works or plants of any other public service utility."

The franchise ordinances in question enacted by the City of Los Angeles provided, among other matters, that the grantee may operate in accordance with and limited only by the statutes of the State of California applicable thereto; that the rate of fare for any distance shall not exceed five cents for one passenger; that the franchise is granted upon each and every condition set forth in the instrument; that a failure to comply with each and any of the conditions of the franchise would work an immediate forfeiture of all the rights granted; and that said grantee is required to file a written acceptance of the terms and conditions of the said franchise with the City Clerk

of said city, together with a faithful performance bond of a specified amount [R. 397].

By the Franchise Act of 1893 (Stats. 1893, p. 288) a definite plan for the sale of franchises to construct or operate railroads upon the public streets of a municipality was set forth by the legislature. That act read as follows:

> "Section 1. Every franchise or privilege to erect or lay telegraph or telephone wires, to construct or operate railroads along or upon any public street or highway, or to exercise any other privileges whatever hereafter proposed to be granted by the Board of Supervisors, Common Council, or other governing body of any county, city and county, city, town or district within this state, shall be granted upon the conditions in this Act provided, and not otherwise. The fact that an application for such franchise or privilege has been made to such Board of Supervisors, Common Council, or other governing or legislative body, together with a statement that it is proposed to grant the same, must first be advertised in one or more daily newspapers of the county, city and county, city, town, or district wherein the said franchise or privilege is to be exercised. Such advertisement must continue every day for at least ten days, and must commence at least thirty days before any further action of the Board of Supervisors, Common Council, or other governing or legislative body. The advertisement must state the character of the franchise or privilege proposed to be granted, the term of its continuance, and, if a street railroad, the route to be traversed, and the day on which tenders will be received for the same. On the day so stated, the Board, or other governing or legislative body herein mentioned, must meet in open ses-

sion and read the tenders. The franchise or privileges must then be awarded to the highest bidder: provided, however, that nothing in this section shall affect a special privilege granted for a shorter term than two years."

Prior to that time no definite scheme for the sale of franchises to the highest bidder had been provided by the Legislature.

In 1901 a new franchise act was enacted (Stats. 1901, p. 265), which dealt with the same subject. Thereafter, in 1905 (Stats. 1905, p. 777), an entirely new act was adopted, known as the Broughton Franchise Act, which repealed the former acts. This later act was amended in 1909 (Stats. 1909, p. 125) and in 1915 (Stats. 1915, p. 1300). By the 1915 amendment it was expressly provided as follows:

"Every franchise or privilege to erect or lay telegraph or telephone wires, to construct or operate street or interurban railroads upon any public street or highway, to lay gas pipes for the purpose of carrying gas for light, heat, or power, to erect poles or wires for transmitting electricity for light, heat or power, along or upon any public street or highway, or to exercise any other privilege whatever hereafter proposed to be granted by boards of supervisors, boards of trustees or common councils, or other governing or legislative bodies of any county, city and county, city or town within this state, except steam railroads and except telegraph or telephone lines doing an interstate business, and renewals of franchises for piers, chutes or wharves, shall be granted upon the conditions in this act provided, and not otherwise. *The grantor may, however, in such franchise impose such other and additional terms*

and conditions not in conflict herewith, whether governmental or contractual in character, as in the judgment of the legislative body thereof are to the public interests."

There is no particular need of going into these various changes—suffice it to say that since 1893 the city in granting franchises has been, by legislative fiat, required to sell the franchises granted by it for the use of its streets. Ever since that time such franchises have been sold. It will be seen that under the act the method by which a sale is made is comparatively simple. An application is made for a franchise. The city advertises that it will make a sale of the franchise for which application is made. In the notice of sale is set forth all the terms and conditions upon which the franchise will be sold and the rights granted. The franchise is awarded to the highest bidder and an ordinance is then passed giving the rights to the purchaser, which ordinance contains all of the terms and conditions upon which the rights sold may be enjoyed upon acceptance by the grantee.

With these provisions of the constitution and laws of the State of California in effect at the time the franchises were granted, together with the charter provisions of the City of Los Angeles, we maintain that under the following authorities the franchises were contracts:

It was said by this court in *St. Cloud Pub. Serv. Co. v. City of St. Cloud,* 265 U. S. 352, 68 L. Ed. 1050, that:

> "Provisions in ordinances granting franchises to street railway companies that the rate of fare shall not be more than five cents, or that the grantee shall

not charge a higher fare, are contractual. (Detroit v. Detroit Citizens St. R. R. Co., 184 U. S. 368; Cleveland v. Cleveland City R. R. Co., 194 U. S. 517; Cleveland v. Cleveland Elec. R. R. Co., 201 U. S. 529; Ga. R. & Power Co. v. Decatur, 262 U. S. 434.)"

In *Madera Water Works v. City of Madera,* 185 Fed. 281, the California law was construed and it was therein stated:

> "Complainant's franchise to occupy and use the streets of the city of Madera must necessarily rest in a grant from the state. * * * All efforts, therefore, to pitch the controversy on any other than a contractual plane must be unavailing."

In *City of San Diego v. Kerckhoff,* 49 Cal. App. 473, the city had brought an action to recover on a bond given to insure the performance of the terms of a franchise granted by the city for the construction of a railroad. The court said (at p. 481):

> "The franchise of a street railroad finds its origin in the action of the municipality. It is a contract between the city and the grantee."

In *City of Albany v. U. S. Fid. & Guar. Co.,* 38 Cal. App. 466, the city brought action to recover upon a bond for failure to construct a railroad in accordance with the terms of the franchise. The court said:

> "At the instant of the grant of the franchise the franchise became an irrevocable contract. * * *"

In *St. Helena v. San Francisco, etc. Ry.,* 24 Cal. App. 71, it was said:

"It is not disputed that said franchise constitutes a contract that is binding upon both parties. * * *"

A petition for hearing was filed in the Supreme Court, wherein it was denied, the Supreme Court stating:

"Such power (the police power) must be founded upon the contract between the city and company whereby the franchise is granted, or upon some valid contract obligation of the company. * * * It (the paving of the street) is a constituent part of the contract granting the franchise, though not expressed therein in terms. The company is therefore bound by contract to pave the street in accordance with the city ordinance. * * *"

In *Los Angeles Ry. Co. v. City of Los Angeles*, 152 Cal. 242, the question of the forfeiture of a franchise granted to plaintiff by the City was involved. An action was brought by the Railway Company to enjoin the defendant City from interfering with the railroad in exercising its alleged franchise rights, after it had failed to construct a part of its road in accordance with the terms of this franchise contract. The court stated:

"It is argued in support of this view that nothing is involved in this controversy beyond the respective rights of the plaintiff and defendant growing out of and dependent upon the ordinance granting the franchise which it is contended embraces all the terms of the contract. * * * We agree with the appellant that the rights of the parties are measured by the terms of their contract. * * *"

In fact, it is not seriously disputed that the franchises are contracts, and the court below in effect admitted that they were in its statement—

"that even upon the assumption that the city had power to fix the utility rate by contract, *and that the rate provisions contained in the franchise granted to plaintiff did constitute contracts,* nevertheless the rates specified in the provisions of the franchise have been changed by the exercise of the police power of the state." [R. 542.] (Italics ours.)

II.

The City Had Power to Enter Into Such Contracts, Including the Fixing of Maximum Charges.

The court below, on this point, stated:

"The city would avoid the applicability of these general principles by contending that, although admitting the franchise rates are subject to change by the State Railroad Commission, nevertheless, the franchises are contracts between the parties, and that, therefore, no substantial federal question is presented, and the federal court is without jurisdiction to grant plaintiff the injunctive relief it asks. Briefly answering this contention, we think it may well be doubted whether the state of California ever delegated power to the city to contract with a public utility on the subject of rates so as to restrict future regulations." [R. 540.]

The principle may be stated that when a municipality, under and by reason of the state constitution, statutes and its charter, has clearly been granted the power to enter into a contract with a public utility as to rates, which contract is binding upon the parties thereto, and where the municipality has properly exercised that power, the contract is binding upon the parties until and when abrogated by the state, and until such contract is abrogated no question of confiscation arises. In such cases

the federal courts will not enjoin the enforcement of such contract rates at the request of the utility.

Thus, in *Columbus Ry. Co. v. City of Columbus*, 294 U. S. 399, 63 L. Ed. 669, the court said:

> "The authority under which the city acted came from the state and was granted by proper statutes passed for that purpose. The contracts were made between the city and the company and became mutually binding for the period named in the ordinances.
>
> "By these contracts, obligatory alike upon the city and the company, the city granted the right to use the streets and the company bound itself to furnish the contemplated service at the rates of fare fixed in the ordinances."

In *City of Opelika v. Opelika Sewer Co.*, 265 U. S. 215, 68 L. Ed. 985, it was held that whether or not a contract between a municipal corporation and a public service corporation is valid, under the laws of the state where they are located, is a question for the state courts to decide. That where the constitution of the state forbids grants of special privileges or immunities, the Legislature cannot make such a grant indirectly by giving power to a City to make it; but the Legislature, without constitutional power to make an irrevocable grant of privileges to a public service corporation, may yet confer power upon a municipal corporation to enter into a contract conferring such privileges so that the municipality cannot of its own motion recede from the grant.

In that case this court stated that the ordinance in question

"purported to be a contract, and that if it was a valid one, it bound the Sewer Company not to charge more than the prescribed rates. Columbus R. P. & Light Co. v. Columbus, 249 U. S. 399, 63 L. Ed. 669."

Section 2 of the Constitution of the state of Alabama, therein construed, provided that no law

"making any irrevocable or exclusive grants of special privileges or immunities shall be passed by the legislature and (that) every grant of a franchise privilege or immunity shall forever remain subject to revocation, alteration, or amendment."

That is a provision similar to the California constitution, which provides (Art. I, Sec. 21):

"No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislature."

In construing that provision of the Alabama constitution, this court said:

"We see no reason to doubt that the legislature, without impairing its power to revoke, may give a city power to make a contract from which the city of its own motion may not recede. * * * The Alabama decisions construe the state constitution and such charters (of municipalities) to allow a contract to be made, subject to being revoked, whenever the legislature of the state may think fit."

It was thereupon held that the ordinance prohibiting the Sewer Company from charging in excess of maximum rates therein contained was valid, on the theory

"that the city had the power to make the contract upon which it relies."

It is noteworthy in the *Opelika case* that the charter provisions referred to merely went to the extent that the City was given power

> "to maintain the health and cleanliness of the city, and to this end to adopt and maintain an efficient system of sewerage (Sec. 11);"

and

> "to establish and build drains, sewers * * * and to regulate the same."

Construing these sections this court said:

> "We shall assume that the city had power to make an arrangement with a company to do the work."

And even though the court stated that the charter provisions

> "do not go far enough to empower it (the city) to regulate prices charged by another, and, in short, we find no grant of that character elsewhere,"

nevertheless,

> "as we have said, the Alabama decisions sustain the conclusion that the city had the power to make the contract upon which it relies,"

and, therefore, the ordinance was valid and enforceable as to the rate provision.

So, also, in *St. Cloud Pub. Serv. Co. v. City of St. Cloud,* 265 U. S. 352, 68 L. Ed. 1050, this court stated that a state may authorize a municipal corporation to establish, by an inviolable contract, the rates to be charged by a public service corporation for a definite term, not grossly unreasonable in time, and the effect of such a contract is to suspend, during its life, the governmental

power of fixing and regulating rates; that charter authority to a municipal corporation to provide for, control and regulate the erection, maintenance and operation of gas works and regulate and prescribe the fees and rates to be charged for gas, includes power to contract for the rates to be charged, where the state courts have so construed it; that if a municipal corporation has power to contract for rates for public service and also to prescribe rates from time to time, the exercise of the power to contract suspends the power to regulate; that a contract fixing rates is established by acceptance of a municipal ordinance granting authority to construct a plant for producing gas with authority to charge a specified price for gas furnished.

A careful study of this case indicates the only limitation upon the doctrines enunciated is that the authority of the municipality to make a valid contract must clearly and unmistakably appear. However, the charter powers of the City of St. Cloud appear to have been no greater than the charter grant of 1905 to the City of Los Angeles. The material sections of the charter referred to in the decision provided that the City

> "shall be capable of contracting and being contracted with, and shall have all the powers possessed by municipal corporations at common law;"

that

> "the common council, in addition to all powers herein specifically mentioned, shall have full power and authority to make * * * all such ordinances for the general welfare of the city and the inhabitants thereof, as they shall deem expedient;"

that

> "the common council shall have full power, by ordinance, * * * to provide for and control the erection and operation of * * * works * * * *and to grant the right* to erect, maintain and operate such works * * * provided * * * that the common council shall have authority to regulate and prescribe the fees and rates and charges of any and all companies hereinbefore mentioned."

Contract this phrase "grant the right" with the Los Angeles Charter provision, "such grant and any contract in pursuance thereof." (1905 Amend. to City Charter, *supra*, p. 17.)

The court stated, in connection with these charter requirements:

> "In construing and giving effect to these provisions of the charter, we look to the decisions of the Supreme Court of the state. * * * In the light of these decisions of the Supreme Court of the state of Minnesota, we think it is clear that the city had authority, in 1905, under its charter and the laws of the state, to enter by ordinance into a contract * * * and we do not think that this contractual power was limited by the proviso that the council should have the right to 'regulate and prescribe' the rates and charges of the companies to which it might grant the right of constructing such works. *It is true that, standing alone, this proviso, in the absence of any state decision to the contrary, would, under the construction given similar language* in *Home Tel. Co. v. Los Angeles, 211 U. S. 274,* 53 *L. Ed. 183, be regarded as conferring authority merely to exercise the governmental power of regulating rates and not authority to enter into a contract.* In that case, however, it was pointed out

that there was no other provision of the charter authorizing the city to contract as to rates. And in the present case, as the other provisions of the charter give the city authority so to contract, we must regard the proviso as merely an alternative provision; that is to say, we think that the city might either contract as to the rates as an incident to its power of granting the right to construct and operate the public utility, or, if it did not exercise this power to contract, might thereafter 'regulate and prescribe' the rates in the exercise of the governmental authority conferred by the proviso. *One power, however, is not destructive of the other.* And where a municipality has both the power to contract as to rates and also the power to prescribe rates from time to time, if it exercises the power to contract, its power to regulate the rates during the period of the contract is thereby suspended and the contract is binding. Paducah v. Paducah R. Co., 261 U. S. 272, 67 L. Ed. 650, 43 Sup. Ct. Rep. 335." (Italics ours.)

In the California charter amendment of 1905 it will be noted that the City of Los Angeles was given power to grant franchises, provided that

> "every grant shall * * * make adequate provision by way of forfeiture * * * to secure efficiency of public service at reasonable rates * * * throughout the term of the grant."

We do not see how such grants, under the 1905 amendment, could be made effective, or construed, other than as a grant of the power *to contract*, and any other construction would render the charter provision abortive. Under no construction could this provision of the 1905 amendment be called merely regulatory of rates.

In 1891 the Legislature enacted a statute, which, in our opinion, gave the power to contract with reference to rates for street railways, such statute reading as follows (Stats. 1891, p. 12—amending Sec. 497 of the Civil Code):

> "Authority to lay railroad tracks through the streets and public highways of any incorporated city, city and county, or town, may be obtained for a term of years not exceeding fifty, from the Trustees, Council, or other body to whom is intrusted the government of the city, city and county, or town, under such restrictions and limitations, and upon such terms and payment of license tax, as the city, city and county, or town authority may provide. In no case must permission be granted to propel cars upon such tracks otherwise than by electricity, horses, mules, or by wire ropes running under the streets and moved by stationary engines, unless for special reasons in this title hereinafter mentioned; provided, however, that such board or body in granting the right, or at any time after the same is granted, to use electricity or any other of said modes, shall have power to impose such terms, restrictions, and limitations as to the use of streets and the construction and mode of operating such electric and other roads as may, by such board or body, be deemed for the public safety or welfare."

The Statute of 1891 above quoted did expressly give to cities power to grant franchises

> "under such restrictions and limitations and upon such terms * * * as the city * * * may provide * * *;"

and in the granting of such franchises to

> "impose such terms, restrictions and limitations as to the use of streets * * *, and * * * mode of

operating such * * * roads as may * * * be deemed for the public safety or welfare."

As confirming this position, that the Statute of 1891 did constitute a grant of power to contract with reference to rates, the Legislature March 21, 1872, had enacted a statute in the nature of a limitation of the power of municipalities to contract with reference to rates, in the following language, to-wit (Civil Code, Sec. 501):

> "The rates of fare on the cars must not exceed ten cents for one fare, for any distance under three miles. The cars must be of the most approved construction for comfort and convenience of passengers, and provided with brakes to stop the same, when required. The rate of speed must not be greater than eight miles per hour. A violation of the provisions of this section subjects the corporation to a fine of one hundred dollars for each offense."

However, section 501 of the Civil Code has been amended from time to time (from 1872 to 1903), and is still in force as amended in 1903, reading as follows:

> "Rates of fare on street-cars. Construction of cars. Penalty. The rates of fare on the cars must not exceed ten cents for one fare for any distance under three miles, and in municipal corporations of the first class must not exceed five cents for each passenger per trip of any distance in one direction either going or coming, along any part of the whole length of the road or its connections. The cars must be of the most approved construction for the comfort and convenience of passengers, and provided with brakes to stop the same, when required. A violation of the provisions of this section subjects the

corporation to a fine of one hundred dollars for each offense."

Furthermore, it will be noted that until the creation of the Railroad Commission there was an entire absence from the laws of the state and the charter provisions of the City of Los Angeles of any power to regulate or change rates. In other words, this entire absence of power is confirmatory of the express power given to the City to contract. This absence of power to regulate was commented upon in the case of *Water Light & Power Co. v. City of Hot Springs*, 274 Fed. 827. construing the law of South Dakota relative to franchises granted by the City fixing maximum rates for water and electricity. It was therein said:

> "In the case at bar these franchises do fix a maximum rate, and are contracts, because the franchises themselves do not reserve to the city future control of rates to be charged for service, nor do the statutes or constitution of the state of South Dakota under which the defendant acted in granting the franchises reserve to the city future control over such rates, nor is there any power in the statutes as they then existed given to the city to change these rates. *The relation between the plaintiff and defendant was and is therefore contractual and such a contract cannot be impaired by an amendment of the laws or the constitution.*" (Italics ours.)

The same case points out the distinction between the two classes of power residing in a municipality—one purely governmental in its nature and the other partaking of administrative or business nature. Commenting on this distinction the court said:

"To the first of those belongs the police power and in the exercise of such police power a city council can in no manner bind its successors; but a city has full power when authorized either by the constitution of the state or by legislative enactment to contract for the rendering of public service by individuals or private corporations, and in such contract fix the rates to be charged for such service. The granting of a franchise fixing a maximum rate is a contract and when the franchise itself does not reserve to the city future control of the rates to be charged for service or the constitution or statute under which the city acted in granting the franchise does not reserve to such city future control over such rates, including the power to change same, such franchise becomes a binding contract, no more subject to impairment than would be the contract of individuals."

We think this decision of the District Court is fully in accord with the doctrine laid down by this court in cases construing franchises granted by a city fixing maximum rates for service.

There is a line of cases, to be sure, exemplified by:

Denney v. Pac. Telephone & Tel. Co. (1928), 276 U. S. 97, 72 L. Ed. 483;

San Antonio Traction Co. v. San Antonio Pub. Serv. Co., 255 U. S. 547, 65 L. Ed. 777;

Miss. R. R. Comm. v. Mobile & Ohio R. R. Co., 244 U. S. 388, 61 L. Ed. 1216;

Augusta-Aiken Ry. & Elec. Corp. v. R. R. Comm., 281 Fed. 977;

Smith v. Ill. Bell Tel. Co., 270 U. S. 587, 70 L. Ed. 747;

Muscatine Lighting Co. v. City of Muscatine, 255 U. S. 539, 65 L. Ed. 764;

(and cases therein cited)

which hold, in effect, that municipalities have no power to enter into contracts fixing maximum charges for public service, but an analysis of these cases will show one of three things: either (1) that under the local law of the state the particular city had no power to enter into such contracts; or (2) that the court was not construing the franchise rate but was construing what had always been a statutory rate; or (3) what had originally been a contract rate had been changed to a statutory rate. This is clearly indicated in the *Denney case,* where the rate involved had been fixed by the Postmaster General in 1919 when the utility was under federal control, and the franchise rate had been abrogated. Later, in 1923, the Department of Public Works of the state of Washington, pursuant to statutory authority, approved as just and reasonable the rates fixed by the Postmaster General in federal control in 1919, which rates were of a higher level than those provided in the contracts.

So, also, in the *San Antonio case* this court stated that the powers of the city to contract cannot be implied. Therefore, in effect, there was no contract rate.

In the *Mississippi R. R. Comm. case* the court dealt with six direct orders of the Commission directing passenger trains to be restored to service. Their orders were, of course, not contractual, but statutory.

In the *Augusta-Aiken case* the record "disclosed no contractual relations between the company and the state."

In the *Smith case* the court again was dealing with rates fixed by the State Commerce Commission.

In the *Muscatine case* this court particularly emphasized the distinction in saying:

> "It follows that as the rates here involved are conceded to be confiscatory, they cannot be enforced, *unless they are secured by a contract obligation.*" (Italics ours.)

These cases are all illustrative of the distinction which we think is most plain.

It was also argued in the court below that Article I, Section 21 of the State Constitution, providing that

> "No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislature * * *"

prohibits the city from granting franchise contracts with limitations upon maximum rates. In short, that such franchises cannot be valid contracts because the city had no power under the constitutional prohibition to bind itself. The authorities relied upon were

City of San Antonio, supra; and
City of Denver v. Stenger, 277 Fed. 865.

We think, however, that the distinction is plain that the power of regulation could always be exercised by the state, but until exercised, as we shall hereinafter show in our argument under the next heading, the franchise maximum charge was binding upon the utility. In the cases relied upon *contra* the court was not discussing a contract or franchise rate, as it had held that the municipality had no power under the laws of the state to contract. In fact, this point was directly passed upon by this court in *Opelika v. Opelika Sewer Co.,* 265 U. S. 215, where the contract was sustained as binding *between the parties,* even though subject to revocation or alteration by the state. This court said (at p. 218):

"But we see no reason to doubt that the legislature, without impairing its power to revoke, may give a city power to make a contract, from which the city, of its own motion, may not recede. The city has not attempted to recede from it."

In concluding our argument on this point, we maintain that the City had express power, and now possesses such power, to enter into franchise contracts, subject to the paramount power of the state to regulate rates therein, pursuant to the following laws of the state:

1. By Section 497 of the Civil Code, enacted in 1891 (Stats. 1891, p. 12);
2. By the Franchise Act of 1893 (Stats. 1893, p. 288);
3. By the Broughton Franchise Act of 1901 (Stats. 1901, p. 265);
4. By the Franchise Act of 1905 (Stats. 1905, p. 777), as amended in 1909 and 1915 (Stats. 1909, p. 125; Stats. 1915, p. 1300);
5. By the Charter of 1889, as amended in 1905 (Stats. 1905, p. 980);
6. By the further amendment of the same section in 1911 (Stats. 1911, pp. 2051-2063);
7. By the Constitutional Amendment of 1914 (Art. XII, Sec. 23), which merely prohibits the "fixing of rates" by a city, but still permits the city "to grant franchises for public utilities upon the terms and conditions and in the manner prescribed by law."

III.

It Is Immaterial That a Rate for Public Service Fixed by Valid Contract Between a Municipal Corporation and a Public Service Corporation May Be Confiscatory.

This proposition is so well established by the decisions of this court that only the briefest citation of authority is necessary.

It was said in *St. Cloud Pub. Serv. Co. v. St. Cloud*, 265 U. S. 352, 68 L. Ed. 1050, that

> "Where a public service corporation and a municipality have power to contract as to rates and exert that power by fixing the rates to govern during a particular time, the enforcement of such rates is controlled by the obligation resulting from the contract, and the question whether they are confiscatory is immaterial. So. Iowa Elec. Co. v. Chariton, 255 U. S. 539, 65 L. Ed. 764, and cases there cited; Paducah v. Paducah R. Co., 261 U. S. 267, 67 L. Ed. 647; Ga. R. & Power Co. v. Decatur, 262 U. S. 432, 67 L. Ed. 1065."

To the same effect is *Columbus Ry. P. & L. Co. v. City of Columbus*, 249 U. S. 399, wherein it was said that ordinances passed by the city of Columbus under authority of certain laws of Ohio and accepted by street railway companies constituted binding contracts to furnish street railway service for twenty-five years, at specified rates, in return for the use of the streets, and were not permissive franchises which the grantees might surrender when they ceased to be unremunerative.

In *Cleveland v. Cleveland City Ry. Co.*, 194 U. S. 517, it was said:

"In reason, the conclusion that contracts were engendered would seem to result from the fact that the provisions as to rates of fare were fixed in ordinances for a stated time and no reservation was made of a right to alter; that by those ordinances existing rights of the corporations were surrendered, benefits were conferred upon the public and obligations were imposed upon the corporations to continue those benefits during the stipulated time. When, in addition, we consider the specific reference to limitations of time which the ordinances contained, and the fact that a written acceptance by the corporations of the ordinances was required, we can see no escape from the conclusion that the ordinances were intended to be agreements binding upon both parties definitely fixing the rates of fare which might be thereafter charged."

To the same effect are *Detroit v. Detroit etc. Ry. Co.*, 184 U. S. 368, and *Henderson Water Co. v. Corp. Comm.*, 269 U. S. 278, 70 L. Ed. 273.

IV.

The Public Utility Can Seek No Relief From the Courts Unless It Secures a Change of the Franchise Rates by Order of the State Railroad Commission.

As we have pointed out, the State Railroad Commission refused to grant any change of rates to the Company in its instant application (Order No. 19,521). It is true that the Railroad Commission, on May 31, 1921, issued an intermediate, permissive order authorizing a basic six-cent rate, but that order never became effective and was never acted upon by the parties. The final order in said matter was one of dismissal, granted at the request of

the Company, dismissing the entire proceeding and revoking the intermediate, ineffective order. [R. 349-350.]

Conceding that after the constitutional amendment of 1914 the State Railroad Commission would have the power to change the franchise contract rates, nevertheless, it has been held by this court that where no action is taken by the State the contract rates remain in full force and effect.

Thus, it was said in *Henderson Water Co. v. Corporation Commission, supra* (269 U. S. 278):

> "The present case differs from the cases cited, in that when the water company applied to the corporation commission for an order increasing rates, it was bound by the terms of a contract with the city contained in its franchise to furnish water at a low schedule of rates fixed therein. It was not entitled to any judicial relief from this situation, however inadequate the rates. Columbus R. L. & P. Co. v. Columbus, 249 U. S. 399, 63 L. Ed. 699; St. Cloud Pub. Serv. Co. v. St. Cloud, 265 U. S. 352, 68 L. Ed. 1050. *Only by securing the waiver of the franchise rates by order of the corporation commission, speaking for the state, did the water company have any standing to ask for a fixing of rates in excess of the franchise rates.* Trenton v. N. J., 262 U. S. 182, 67 L. Ed. 939." (Italics ours.)

So, also, in *Milwaukee Elec. Ry. v. Wisconsin R. R. Comm.*, 238 U. S. 174, this court quoted with approval from *Manitowoc v. Manitowoc & N. T. Co.*, 145 Wis. 13, to the following effect:

> " 'No specific authority having been conferred on the city to enter into the contract in question, the right of the state to interfere whenever the public

weal demanded was not abrogated. *The contract remained valid between the parties to it until such time as the state saw fit to exercise its paramount authority, and no longer.* To this extent, and to this extent only, is the contract before us a valid subsisting obligation. It would be unreasonable to hold that by enacting section 1862, Stats. (1898), or section 1863, Stats. (Supp. 1906, Laws of 1901, Ch. 425), the state intended to surrender its governmental power of fixing rates. That power was only suspended until such time as the state saw fit to act.'" (Italics ours.)

In *Lenawee County Gas & E. Co. v. City of Adrian,* 209 Mich. 52, 176 N. W. 590, it was said that in the absence of the exercise by the state of its legislative power to fix rates, an ordinance of a city in whose streets a gas company lays its pipes, fixing rates and *accepted* by the company, constitutes a binding contract, and that such a contract is not subject to control of the State Utilities Commission.

So, also, in *Southern Utilities Co. v. City of Palatka,* 268 U. S. 232, 69 L. Ed. 930, this court said:

"The supreme court (state of Florida) held that the city had power to grant the franchise and to make the contract, and that it had no power, of its own motion, to withdraw, but it concedes the unfettered power of the legislature to regulate the rates. On that ground the defendant contends that there is a lack of mutuality and therefore that it is free and cannot be held to rates that, in the absence of contract, it would be unconstitutional to impose. The argument cannot prevail. Without considering whether an agreement by the company in consideration of the grant of the franchise might not bind the company in some cases, even if it left the city

free, it is perfectly plain that the fact that the contract might be overruled by a higher power does not destroy its binding effect between the parties when it is left undisturbed. Ga. R. & Power Co. v. Decatur, 262 U. S. 432, 67 L. Ed. 1065; Opelika v. Opelika Sewer Co., 265 U. S. 215, 68 L. Ed. 985."

In *Pacific Telephone & Tel. Co. v. Whitcomb*, 12 Fed. (2d) 279, it was said:

"It cannot be doubted that where a franchise contract is entered into between a municipality and a public utility corporation, fixing rates to be charged by the latter for a not grossly unreasonable period of time, such rates are binding and enforceable, even though confiscatory of the property involved. St. Cloud Pub. Serv. Co. v. City of St. Cloud, 265 U. S. 352, 68 L. Ed. 1050. Nor can it be doubted that under the statutes of the state of Washington the department has the power to abrogate and cancel such franchise rates, if in a proper case it sees fit to do so. * * * *It may be conceded that the department was not obliged to grant any relief against the rates stipulated in the franchises, and that it could not by judicial action be compelled to do so.* Yet if it undertakes to terminate such rates, pursuant to its plain statutory powers, the rates substituted instead must be fair, just and reasonable, if the plain mandate of the statute defining its duties is to be obeyed. And when the substituted rates are challenged, they must be considered as statutory, not franchise, rates, and their character as being confiscatory, or not, must be measured by the principles of law applicable to such rates." (Italics ours.)

The case is particularly in point in the matter now before us, for the reason that the plaintiff here is attempt-

ing to attack the order of the Railroad Commission, as was done by the city there. However, the important distinction, in our opinion, is this, that in the Whitcomb case the state authorities had changed the contract rate to that of a statutory rate. In the instant case there is no such substitution.

In *Monroe v. Detroit M. & T. Shortline R. Co.*, 187 Mich. 364, 153 N. W. 669, the contention was made in behalf of the company that the State Utility Act operated as a revocation of any power the city might have had to regulate the service of the railroad by contract, or otherwise. Of this contention the court said:

> "It does not follow that because the contract may yield to the exigency of public necessity, when such exigency has been determined in a proper case and manner by competent authority that the respondent, a party to the contract, may ignore the contract obligation, plead the public or its own convenience as an excuse, and remit the relator to a commission for relief. On the contrary, it seems wholly reasonable that it should perform its contract obligations until relieved therefrom by competent authority."

V.

There Was No Change From the Contract or Franchise Rate to a Statutory or Legislative Rate Due to the Orders of the Railroad Commission, Either

(a) Under the May, 1921, Application and Order (Decision No. 9029); or,

(b) Under the March 26, 1928, Decision and Order (No. 19,521).

Under the first application of the plaintiff to the Railroad Commission, to which we will refer as the 1921

Application and Order, plaintiff pleads [R. 12, Allegation IV of the Amended Complaint] that:

> "In May, 1921, upon the application of plaintiff to the Commission for an investigation of its service and financial condition, and for an order authorizing it to so operate its system and change its rates that the income would be sufficient to pay the cost of the service, the Commission made a permissive order (Decision No. 9029) authorizing plaintiff, within thirty days, to increase its basic five-cent fare to six cents, and authorizing plaintiff to sell ten tickets or tokens, in blocks, at a total cost of fifty cents. * * * Said increase in fares was never charged and collected by plaintiff, for the following reasons * * *"

Plaintiff then pleads that this increase in fare was never put into effect, for the reasons that it desired to operate its system, if possible, so that it would be unnecessary to increase the five-cent fare, and because the late Henry E. Huntington, as principal owner and stockholder of the properties, desired to attempt to increase the earnings of the company by other means than the collection of a basic fare greater than five cents. [R. 12.]

Attached to plaintiff's amended complaint, Exhibit "D", in the concurring opinion of Commissioner Carr is the statement [R. 169]:

> "This is the second time this company has sought from the Commission authority to depart from the basic five-cent fare, which, with inconsequential exceptions, has prevailed on its Los Angeles system for many years, and to enter upon the unchartered sea of multi-coin fares.
>
> "In November, 1918, the company came before the Commission with a request that its service and

financial condition be investigated. This finally resulted, on May 31, 1921, in an order permitting the company to charge a six-cent fare, with ten tokens or tickets for fifty cents. (*Re* Los Angeles Ry. Corp., 19 C. R. C. 980) * * *.

"The company did not accept the increased fares authorized by this decision, and after a period of over five years, and on October 25, 1926, at the instance of the company, the Commission set aside and revoked its decision." (Italics ours.)

Notwithstanding the fact that the 1921 Application and Order is in effect not relied upon in any way by appellee, as shown by its pleading, the court below, nevertheless, preferred

"to rest our decision upon the ground that even upon the assumption that the city had power to fix the utility rate by contract, and that the rate provisions contained in the franchises granted to plaintiff did constitute contracts, nevertheless, the rates specified in the provisions of the franchises have been changed by the exercise of the police power of the state. It appears that in 1921 the Commission granted plaintiff company authority to increase its rates over the basic five-cent fare, which was then in force. There were in force and effect at that time 102 out of 116 franchises granted to plaintiff or its predecessors. Since May, 1921, fourteen other franchises have been granted. When the Commission, in 1921, made its order changing the basic five-cent fare, it authorized plaintiff to file with the Commission and put into effect, thirty days from the date of the order, a schedule of rates increasing the then present basic fare of five cents to six cents, and directed that tickets or tokens be put on sale. *That plaintiff company did not avail itself of the right to the increase does*

not affect the fact that the Commission exercised its exclusive jurisdiction to regulate rates by making and finding that the rates provided for in the franchises granted to plaintiff were inadequate and that the six-cent fare authorized was a just rate." (Italics ours.) [R. 542-543.]

The error in the conclusion of the court is manifest. To base its decision upon this 1921 "Order" the court below was forced to go beyond the pleadings and hold a "permissive order" as pleaded is obligatory upon the city in invalidating its franchises, notwithstanding the fact that this permissive order had never been put into effect or even been accepted by the utility. Even further facts are revealed by the record that manifestly indicate the erroneous conclusion of the court below. In the affidavit of H. C. Mathewson, Secretary of the Railroad Commission [R. 347-350], is shown that on June 20, 1921, within the period allowed by law, a petition for rehearing on said decision was filed by the utility, in which the lawfulness of the order was challenged. The petition for rehearing was set down for argument before the Commission and removed from the calendar at the specific request of respondent company. On October 13, 1926, respondent company addressed the following letter to the Commission [R. 349]:

"*In re* Application No. 4238.

Gentlemen:

The above application was dropped from the Commission's calendar upon our request on March 14th, 1922, and no further action has been taken in the matter since that date. In view of the entire change of conditions since 1918, when Application No. 4238

was filed by this company, we at this time request that your Honorable Commission dismiss Application No. 4238 and the matters supplemental thereto.

Very respectfully,

LOS ANGELES RAILWAY CORPORATION,
By (signed) G. J. Kuhrts,
Vice-President and General Manager.
GIBSON, DUNN & CRUTCHER,
By
S. M. Haskins,
Its Attorneys."

Thereafter, on October 25th, 1926, the Railroad Commission issued its Decision No. 17,526, providing as follows [R. 349]:

"ORDER SETTING ASIDE DECISION AND DISMISSING APPLICATION BY THE COMMISSION.

"Request having been made by applicant in the above-entitled matter for dismissal of this application, and good cause appearing for the granting of said request,

It is hereby ordered that the above-entitled application (being Application No. 4238) be, and the same is hereby, dismissed; and

It is hereby further ordered that Commission Decision No. 9029, heretofore rendered in the above-entitled matter, which decision has been suspended by virtue of the pendency of the petition for rehearing, be, and the same is hereby, set aside and revoked.

Dated at San Francisco, California, this 25th day of October, 1926.

H. W. BRUNDIGE,
C. L. SEAVEY,
EZRA W. DECOTO,
LEON O. WHITZELL,
Commissioners."

Furthermore, under the Public Utilities Act (Stats. 1915, p. 115, as amended (Deering's Genl. Laws of California, 1923, Vol. II, p. 2683)), no change in public utility rates is effective "except after thirty days' notice to the Commission and to the public, as herein provided (Sec. 15)"; nor "until * * * schedules of rates, fares, charges and classifications shall have been filed and published in accordance with the provisions of this act (Sec. 17)"; nor until schedules showing all rates and fares to be charged shall have been printed and filed with the Commission (Sec. 18). In fact, Section 17 of the Act prohibits any common carrier from engaging or participating "in the transportation of persons until its schedules of rates, fares, charges and classifications shall have been filed and published in accordance with the provisions of this act."

Furthermore, Section 27 of the Act provides:

> "No street or interurban railroad corporation shall charge, demand, collect or receive more than five cents for one continuous ride in the same general direction within the corporate limits of any city and county, or city or town, *except upon a showing before the commission that such greater charge is justified;* provided, that until the decision of the commission upon such showing, a street or interurban railroad corporation may continue to demand, collect and receive the fare lawfully in effect on November 3, 1914. * * *"

And Section 63 of the Act provides as follows:

> "(a) No public utility shall raise any rate, fare, toll, rental or charge or so alter any classification, contract, practice, rule or regulation as to result in an increase in any rate, fare, toll, rental or charge,

under any circumstances whatsoever, except upon a showing before the commission and a finding by the commission that such increase is justified. * * *"

A perusal of the act as a whole indicates clearly that no change in rates is effective until the provisions of the act have been complied with. We submit that a permissive order of such a nature is totally insufficient to constitute a change of rate, within the purview of the act.

Recapitulating, we submit and maintain that the 1921 Order was totally ineffective to change the franchise maximum rate, for the following reasons:

1. It was never acted upon by the public utility or any of the parties;

2. It was never put into effect upon plaintiff's system in any way;

3. It was abrogated and annulled by the Commission at plaintiff's own request before it could become effective;

4. It has never been treated by plaintiff as anything but a nullity, as its amended bill of complaint shows (plaintiff's first cause of action is predicated entirely upon the existence of franchise rates; and its second cause of action is predicated entirely upon the refusal of the Railroad Commission to change the franchise rates);

5. To rest the decision upon the 1921 order is going entirely outside the scope of the pleadings;

6. The change of rates was never effective under the Public Utilities Act.

Likewise, as the Commission refused to change the *franchise* rates in 1928, we have further proof that the public utility company admits that no change was contem-

plated or effective under the 1921 order. We have many decisions of this court, as well as of the courts of the individual states, that refusal of the Commission to act is not sufficient to change contract rates to statutory rates.

As this court said in the *Henderson Water Co. case, supra* (269 U. S. 278):

> "Only by securing the waiver of the franchise rates by order of the Corporation Commission speaking for the state did the water company have any standing to ask for a fixing of rates in excess of the franchise rates."

In the *City of Adrian case, supra* (209 Mich. 52, 176 N. W. 590), it was said:

> "That the contract 'though binding between the parties to it, in the absence of governmental interposition, is to be construed as having been entered into with reference to the right and power of the government *to assert and exercise* its inherent paramount authority.'" (Italics ours.)

So, also, in the Whitcomb case, *supra* (12 Fed. (2d) 279), it was held that if the state

> "undertakes to terminate such rates, pursuant to its plain statutory powers, the rates substituted instead must be fair, just and reasonable. * * * And when the *substituted rates are challenged,* they must be considered as statutory, not franchise, rates. * * *" (Italics ours.)

As we stated, appellee here is not making any attack upon the statutory rate but is solely concerned with enjoining the State Railroad Commission and the City from further continuance of the contract rates, and the entire theory of its case is not based on the 1921 order in any

way, but is based entirely on the fact that a continuance of the *franchise* rates is confiscatory of its property.

In the *City of Adrian case, supra, Moorehead v. Union Light, Heat & Power Co.* (District Court), 255 Fed. 920, was quoted with approval, to the following effect:

> " 'These cases all decide that in determining whether equitable relief should be granted with respect to a contract, the court must place itself in the position occupied by the parties at the time the contract was made and not at the time at which it was to be performed. If at the time it was made the contract was fair and free from fraud, mistake or imposition, parties must be left free to make their contracts, and it is the duty of the courts to enforce them as made. *The same doctrine has been applied to contracts between municipalities and public utility companies.*' " (Italics ours.)

In the *Southern Utilities Co. case, supra* (268 U. S. 232), it was said:

> "It is perfectly plain that the fact that the contract might be overruled by a higher power does not destroy its binding effect between the parties when it is left undisturbed."

In this regard, we maintain that the franchises continuously have been and now are "undisturbed."

We rely also on the *Whitcomb case, supra* (12 Fed. (2d) 279), where it was said:

> "It may be conceded that the department was not obliged to grant any relief against the rates stipulated in the franchise and that it could not by judicial action be compelled to do so."

And, also, the ruling in *Monroe v. Detroit etc. Shortline R. Co., supra* (187 Mich. 364, 153 N. W. 669), holding:

> "It does not follow that because the contract may yield to the exigency of public necessity * * * a party to the contract may ignore the contract obligation * * * and remit the relator to a commission for relief. On the contrary, it seems wholly reasonable that it should perform its contract obligations *until relieved therefrom by competent authority.*" (Italics ours.)

We submit that there has been no relief by competent authority from the contract rates, and the action filed by the plaintiff herein is based entirely upon an effort on its part to impair and abrogate the contracts in question through injunctive method.

In addition, we direct the court's attention to the fact that after exhaustive investigations made by the Railroad Commission the contract rates were held fair and reasonable, and its ruling in that regard in 1928 is to continue in effect such franchise or contract rates.

In conclusion, we might say that there are many cases, both in the state of California and the federal courts, holding that until paramount authority has intervened and modified franchises fixing rates, they must be recognized as valid and enforceable in the courts.

Thus, in *Henrici v. South Feather Land etc. Co.,* 177 Cal. 442, it was said:

> "The obligation to furnish water at the agreed rate was unlimited in time and continued until the rate was superseded by order of a public body vested with the power of regulating the service."

So, also, in *Southern Pac. Co. v. Spring Valley Water Co.*, 173 Cal. 291, it was said:

> "Where the rates for water devoted to public use have not been fixed by public authority, the person in charge of the use and the consumer may freely contract regarding the price of service and the manner of payment, and such contracts will be deemed valid by the courts and may be enforced by any appropriate mode. (Fresno Canal etc. Co. v. Park, 129 Cal. 437 (62 Pac. 87); Stanislaus W. Co. v. Bachman, 152 Cal. 725, 730 (15 L. R. A. (N. S.) 359, 93 Pac. 858); Leavitt v. Lassen Irr. Co., 157 Cal. 82, 90 (29 L. R. A. (N. S.) 213, 106 Pac. 404).) * * * The power to fix rates and regulate public service of water devoted to public use 'carries with it jurisdiction to determine the reasonableness of charges, irrespective of prior contracts, and to that extent such contracts may be reformed.' *But until such public authority has intervened and modified such prior contract it will be recognized as valid and enforced in the courts.* * * *" (Italics ours.)

So, also, in *Salt Lake City v. Utah L. & T. Co.*, 173 Pac. 556, it was said:

> "So long as the state does not interfere, the rates agreed upon between the parties and the street railway companies in the franchise ordinances are binding and enforceable."

In *Travers City v. Mich. R. R. Comm.*, 168 N. W. 481, it was said:

> "* * * The franchise contract * * * though binding between the parties to it, in the absence of governmental interposition, is to be construed as having been entered into with reference to the right and power of the government to assert and exercise its inherent paramount authority."

In *City of Manitowoc v. Manitowoc etc. Traction Co.*, 145 Wis. 13, 129 N. W. 925, it was said:

> "The contract remained valid between the parties to it until such time as the state saw fit to exercise its paramount authority. * * * It is contended that this law has superseded the contract involved in this suit, and that therefore the contract no longer has any binding force or effect. We do not think so. The statute worked no change in existing rates. It simply provided that all rates should be reasonable and left to the Railroad Commission the power to determine the fact as to whether or not a given rate was reasonable. * * * Until that determination is made the contract is in force. When it is made the contract is superseded, *if the rate is changed.* * * * The court cannot relieve the defendant from an improvident contract but the contract is of such a character in the present instance that the legislative branch of the government may in the interest of the public abrogate it. If, as is contended by counsel for the respondent, no contract was entered into and we were dealing with the ordinance as a legislative enactment pure and simple, *and not as part and parcel of a contract,* there might be good reason for the claim that it is superseded by chapter 362, Laws of 1905, without any affirmative action on the part of the Railroad Commission. But such is not the case before us." (Italics ours.)

That case was cited with approval by this court in *Milwaukee Elec. Ry. v. Wis. R. R. Comm.*, 238 U. S. 174.

VI.

The Absence of California Decisions Upholding the Power of the City to Contract With Reference to Rates Is Immaterial.

Counsel in the court below made frequent reference to the fact that no specific California decision could be pointed out wherein it was directly held that this city had the power to contract with street railway companies for rates.

We merely wish to call the court's attention to the fact that it is not an indispensable requirement or condition precedent that California decisions be pointed out upholding the power to contract, before this court may find that such power did, in fact, exist.

As illustrative of this doctrine, in the case of *Milwaukee Elec. Ry. & Light Co. v. R. R. Comm.*, 238 U. S. p. 174, this court used the following language:

> "* * * This court has repeatedly held that the discharge of the duty imposed upon it by the Constitution to make effectual the provision that no state shall pass any law impairing the obligation of a contract, requires this court to determine for itself whether there is a contract and the extent of its binding obligation, and parties are not concluded in these respects by the determination and decisions of the courts of the states."

It is clear, therefore, that even if there were decisions of the California Supreme Court (which there are not) to the effect that this City had not been given power by the state to contract to fix rates, this court could find otherwise. How much clearer it is, then, that where there has been no expression from the Supreme Court of the state with reference to the power to contract for rates, this

court has a duty to protect the obligation of a contract if it finds, under the record, that one existed.

Conclusion.

In concluding, we submit that the franchises in question are contracts; that the City had, and now has, express power, under the Constitution and laws of the state of California and the charter provisions granted to it, to enter into such contracts, and that the provisions therein limiting charges are valid and should be protected by the state and federal constitutional guarantees prohibiting the impairment of contracts; that it is immaterial that the limitation upon maximum rates in the franchises prohibiting the public utility from charging over five cents per passenger has become confiscatory (even if, in fact, the rates are confiscatory); that the plaintiff, appellee here, is in no position to seek relief from the federal courts, where the State Railroad Commission has refused to change the franchise rates and has left the public utility and the City as contracting parties in the same position in which they were at the time the contracts were entered into; that there has been no change of the franchise or contract rates to statutory or legislative rates by orders of the Railroad Commission; that the State Constitution does not prohibit the City from granting franchise contracts of the kind here in question, on the ground that they are special privileges or immunities, as they are subject to future regulation by the state; that the franchises themselves exhibit an intention to make binding and valid contracts between the City and the public utility; that if the appellee is entitled to any change in the franchise rates, it is only by virtue of an order to be made by the Railroad Commission, pursuant

to article XII, section 23, of the State Constitution, and the Public Utilities Act (Stats. 1915, p. 115, as amended); that these rights are statutory and not judicial; that as appellee has failed to pursue its statutory rights, or even to show that it is entitled to them, it has no standing in the federal courts to seek injunctive relief to abrogate its contracts with the City, on the ground that such contracts (willingly entered into by it) are confiscatory.

For these reasons, and upon the argument stated, we feel that the action of the court below in abrogating the rate fixed in the franchise contracts was in error, and the decree should be reversed.

Respectfully submitted,

ERWIN P. WERNER,
City Attorney;
FREDERICK VON SCHRADER,
Deputy City Attorney;
JOSEPH T. WATSON,
Deputy City Attorney,
Attorneys for Appellant, City of Los Angeles.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1929

No. 60

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and THE CITY OF LOS ANGELES,
Appellants,

vs.

LOS ANGELES RAILWAY CORPORATION (a corporation),
Appellee.

BRIEF OF APPELLANT, RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ARTHUR T. GEORGE,
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Subject Index

	Page
The opinion of the court below	1
Jurisdiction	2
Statement of the case	2
Specification of assigned errors to be urged	6
Argument	10
I. Appellee's franchises are contract	11
II. The City of Los Angeles possessed and now possesses authority to make such contracts and impose rate conditions and provisions therein	20
III. Where a valid contract fixing rates has been entered into between a city and a public utility there is no confiscation	34
IV. The contracts here were binding as between the parties until the Commission exercised the power delegated to it by the legislature by increasing the contract rate in the manner provided by the Public Utilities Act of California	41
V. The court erred in holding that the Railroad Commission by its orders of 1921 and 1928 abrogated the rates fixed in the various franchise contracts in question	56
A. The Commission order of 1921	56
B. The Commission order of 1928	66
Conclusion	72

Table of Authorities Cited

Pages

Albany v. U. S. Guaranty & Fidelity Co., 38 Cal. App. 466 19

Cleveland v. Cleveland City Rwy. Co., 194 U. S. 517....14, 34
Columbus Railway & Power Co. v. City of Columbus, 249 U. S. 399 .....14, 34, 37
Corporation Commission v. Henderson Water Co., 190 No. Carolina 70 48

Denney v. Pacific Tel. & Tel. Co., 276 U. S. 97.....63, 64, 67
Detroit v. Detroit Citizens Rwy. Co., 184 U. S. 368..... 34
Detroit United Railway v. Michigan, 242 U. S. 238..... 34

Georgia Rwy. & Power Co. v. Town of Decatur, 262 U. S. 432 .....34, 36

Henderson Water Co. v. Corporation Commission, 269 U. S. 278 .....43, 46, 64, 65, 67
Henrici v. So. Feather Land etc. Co., 177 Cal. 442..... 55
Home Tel. & Tel. Co. v. City of Los Angeles, 211 U. S. 265 32

Kaul v. American Independent Tel. Co., 95 Kans. 1, 147 Pac. 1130 70

Los Angeles Railway Company v. Los Angeles, 152 Cal. 242 15

Manitowoc v. Manitowoc & Northern Traction Co., 145 Wis. 13, 129 N. W. 925..... 49
Milwaukee Elec. Rwy. & Light Co. v. Railroad Commission, 238 U. S. 174 49
Monroe v. Detroit M. & T. Short Line R. Co., 187 Mich. 364, 153 N. W. 669..... 51

Oklahoma Natural Gas Co. v. Russell, 261 U. S. 290..... 47
Opelika v. Opelika Sewer Co., 265 U. S. 215.....33, 34, 43

Paducah v. Paducah Rwy., 261 U. S. 267.....34, 40

St. Cloud Pub. Serv. Co. v. City of St. Cloud, 265 U. S. 352 34
St. Helena v. San Francisco etc. Rwy., 24 Cal. App. 71. 16
Salt Lake City v. Utah Light & Traction Co., 52 Utah 476, 173 Pac. 556 52

Pages
San Antonio v. San Antonio Pub. Ser. Co., 255 U. S. 547..34, 35
San Diego v. Kerckhoff, 49 Cal. App. 473..... 18
So. Iowa Elec. Co. v. Chariton, 255 U. S. 539.....34, 39
Southern Pacific Co. v. Spring Valley W. Co., 173 Cal. 291 54
Southern Utilities Co. v. Palatka, 268 U. S. 232..43, 62, 64, 65, 67
State ex rel. Ellertsen v. Home Tel. & Tel. Co., 102 Wash. 196, 172 Pac. 899..... 53
Sumpter G. & P. Co. v. City of Sumpter, 283 Fed. 931.... 53

Traverse City v. Citizens Tel. Co., 195 Mich. 374, 388, 161 N. W. 983, 988 61
Traverse City v. Michigan Railroad Commission, 202 Mich. 575, 168 N. W. 481..... 52

Vicksburg v. Vicksburg Water Works Co., 206 U. S. 496..34, 35

Washington, State of v. Pacific Tel. & Tel. Co., 1 Fed. (2nd) 327 53
Wichita Railroad & L. Co. v. Pub. Ut. Comm. of Kansas, 260 U. S. 48 .....61, 68
Woodburn v. Pub. Serv. Comm., 82 Or. 114, 161 Pac. 391.. 53

Other Authorities Cited

Pages

California, Civil Code of:
- Sec. 470 20
- Sec. 497 ..... 20, 27, 30, 32
- Sec. 501 20

California, Constitution of:
- Art. I, Sec. 21 32
- Art. II, Sec. 8 24
- Art. XI, Sec. 19 ..... 25, 30
- Art. XII, Sec. 20 41
- Art. XII, Sec. 22 41
- Art. XII, Sec. 23 ..... 27, 28, 29, 30, 41, 42

California, Statutes of:
- Stats. 1889, p. 455 24
- Stats. 1893, p. 288 21
- Stats. 1897, pp. 135 and 176 22
- Stats. 1901, p. 265 22
- Stats. 1905, p. 777 22
- Stats. 1905, p. 994 ..... 24, 27
- Stats. 1909, p. 125 22
- Stats. 1911, p. 18 ..... 29, 41
- Stats. 1911, p. 2051 25
- Stats. 1915, p. 115 ..... 29, 41, 42, 43, 61, 63, 72
- Stats. 1915, p. 1300 ..... 22, 27, 30

California, Public Utilities Act of:
- Sec. 13 ..... 42, 71, 73
- Sec. 15 61
- Sec. 27 ..... 29, 42, 68, 71, 73
- Sec. 63 ..... 43, 63, 71, 73
- Sec. 66 62
- Sec. 67 ..... 71, 72

Kansas, Public Utility Law of 69

North Carolina, Statutes:
- Consolidated Stats. 1919, Sec. 1066 48

United States Code:
- Title 28, Sec. 380 (formerly Judicial Code, Sec. 266) .. 1, 2

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1929

No. 60

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and THE CITY OF LOS ANGELES,

Appellants,

vs.

LOS ANGELES RAILWAY CORPORATION (a corporation),

Appellee.

BRIEF OF APPELLANT, RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

THE OPINION OF THE COURT BELOW.

This case was brought to this Court on direct appeal from an opinion and decree allowing permanent injunction issued by the District Court of the United States in and for the Southern District of California, Southern Division, three judges sitting, pursuant to proceedings had under United States Code, Title 28,

Section 380 (formerly Judicial Code, Section 266). Direct appeal from said decree allowing a permanent injunction is expressly authorized by said section of the United States Code.

The opinion of the Court is officially reported in 29 Federal Reporter (2nd Series) pages 140-148 and appears in the printed record herein at pages 534-549. The decree allowing injunction and injunction appear in the printed record at pages 559-562 and 563-566 respectively.

JURISDICTION.

Pursuant to paragraph one of Rule 12 of this Court appellant Railroad Commission of California and appellant City of Los Angeles duly filed herein their statement as to the basis on which it is contended that this Court has jurisdiction to review the opinion and decree herein.

STATEMENT OF THE CASE.

Appellee Los Angeles Railway Corporation is a public utility street railroad corporation operating in the City of Los Angeles and adjacent territory. The electric lines of said corporation occupy public streets by virtue of one hundred and fourteen (114) franchises, granted to said corporation and its predecessor companies by the Cities of Los Angeles, Vernon and Huntington Park, and the County of Los Angeles. Of the said one hundred and fourteen (114) franchises, (as of December 31, 1926) eighty-one (81) franchises each contain a five cent fare clause with no qualifying

clause providing for a possible change in fare; sixteen (16) franchises, provide that a rate of fare of not more than five cents shall be charged, except upon a showing before a competent authority having jurisdiction over rates of fare, that such greater charge is justified; seven (7) franchises each contain a fare clause specifying other than a flat five cent fare; and ten (10) franchises, each contain no fare clause. (R. 358; 360-381.)

Of the total number of franchises under which Los Angeles Railway Corporation operates, (as of December 7, 1927) one hundred and two (102) were granted by the City of Los Angeles and of said number seventy-three (73) franchises each contain a five cent fare clause with no qualifying clause providing for a possible change in fare. (R. 388; 394-396.) Examples of said type of franchise definitely fixing the rate of fare to be charged at five cents are set forth in full in the record. (Exhibit "C," R. 397-402; Exhibit "D," R. 402-413.) Eighteen (18) of the total number of franchises granted by the City of Los Angeles, all granted subsequent to 1919, contain a provision that the rate of fare shall not exceed five cents per ride except upon a showing before a competent authority having jurisdiction over rates of fare that such greater charge is justified. (R. 388, 397.) An example of this type of franchise is set forth in full in the record. (Exhibit "E," R. 414-424.)

On November 17, 1926, appellee filed with appellant Railroad Commission of California an application for an increase in its rates from the then prevailing flat rate of five cents as fixed in the various franchises

above mentioned, to a basic fare of seven cents cash or four single fare tokens for twenty-five cents. (R. 75-110.) The California Railroad Commission, after conducting a number of hearings thereon, issued its Opinion and Order No. 19521 denying the said application for rate increase. (R. 165-175.)

Thereafter, on June 22, 1928, appellee filed with the District Court of the United States in and for the Southern District of California, Southern Division, its bill of complaint against the Railroad Commission of California. Said bill of complaint was amended on June 28, 1928, and sets forth two alleged causes of action. (R. 8-234.) Plaintiff seeks by its first cause of action to have the Court declare confiscatory the five cent rate of fare which it charges under the various franchises granted to it. (R. 8-53.) By its second cause of action plaintiff seeks to have declared arbitrary and void the above mentioned order of the Railroad Commission of California refusing to increase the five cent rate of fare, on the ground that the Commission did not consider all of the evidence before it and did not make its order with due consideration to the evidence presented to it. (R. 53-72.) It was the prayer of the amended complaint that the existing rates be declared confiscatory, the order of the Railroad Commission be declared void, that said Commission and its officers be enjoined from enforcing or attempting to enforce said order and from interfering with the plaintiff in the charging and collecting of the rates proposed in the amended bill of complaint. (R. 72-74.)

Upon the filing of said complaint, motion was made by plaintiff for interlocutory injunction under United States Code, Title 28, Section 380. (R. 234-235.)

City of Los Angeles on motion duly made was permitted to intervene in said proceeding as party defendant. (R. 238-240.) Both defendants moved to dismiss said amended bill of complaint for want of equity and for various other reasons. (R. 242-252.) Separate answers were filed by said defendants denying all material allegations and alleging that plaintiff company was operating under certain franchises granted by the City of Los Angeles wherein the rate of fare was fixed at five cents per ride; that said franchises constituted contracts binding upon said plaintiff and that said Federal Court was without jurisdiction to grant the relief sought. (Answer of Railroad Commission R. 253-280, particularly R. 274; Answer of City of Los Angeles R. 280-312, particularly R. 282-288.)

Thereafter the said District Court, constituted as provided by United States Code, Title 28, Section 380, heard said motion for interlocutory injunction and said motions to dismiss and evidence was introduced by all parties. At the conclusion of said hearing it was stipulated by all parties that the Court in addition to ruling on said motions might finally determine all issues involved in the amended bill of complaint on the record then before it. (R. 522-524.)

Thereafter the said three judge Court issued its opinion (R. 534-549 and on October 1, 1928, issued its decree allowing permanent injunction. (R. 559-566.)

The Court found the basic five cent fare fixed in the franchises of plaintiff to be confiscatory and held the order of the Railroad Commission denying a rate increase to be void. As a condition of the injunction the Court in its decree authorized plaintiff from and after the entry of the injunction and until final determination of the cause by the United States Supreme Court, to charge and collect not in excess of a basic fare of seven cents cash or four single fare tokens for twenty-five cents, all as prayed for in the amended bill of complaint of plaintiff, and directed that plaintiff issue to each passenger paying such fares a refund ticket or coupon for the excess between the former five cent fare and the rate of fare paid by such passenger. (R. 565.) Under said decree the plaintiff was required to file with the clerk of the Court a surety bond in the amount of $50,000.00 conditioned that if it should ultimately be held by the Supreme Court of the United States that the new rates are unlawful the excess represented by refund tickets or coupons will be refunded by plaintiff upon presentation of such coupons.

Defendants and appellants filed with said Court petition for appeal on October 2, 1928 and on said date order issued allowing appeal. (R. 566-568.) Bond on appeal and a joint assignment of errors were filed by appellants on October 2, 1928. (R. 568-578.)

SPECIFICATION OF ASSIGNED ERRORS TO BE URGED.

Appellant Railroad Commission of California will urge on this appeal the assignment of errors num-

bered I to XIV inclusive. (R. 569-572.) The said assignment of errors so specified are as follows:

"I.

The Court erred in making the decree.

II.

The Court erred in granting the injunction.

III.

The Court erred in making the decree and in overruling the respective motions to dismiss interposed by defendant Railroad Commission and intervener-defendant City of Los Angeles, for the reason that the relief asked in the amended bill of complaint herein is beyond the power and jurisdiction of the said Court to grant.

IV.

The Court erred in making the decree and in holding that the allegations of the first alleged cause of action in said amended bill of complaint stated a cause of action or raised any federal question over which it had or has jurisdiction, for the reason that said alleged cause of action attacks only the present effective rates of fare in force upon plaintiff's street railway system and fixed in the franchises sold to plaintiff by the City, and does not attack any order or act of the Railroad Commission fixing any fare or fares to be charged by plaintiff.

V.

The Court erred in making the decree and in holding that the allegations of the second alleged cause of action in said amended bill of complaint stated a cause of action or raised any federal question over which it had jurisdiction, for the reason that the said alleged cause of action does not attack any order or act of the Railroad Commission changing or modifying in any manner the rates of fare fixed and established in and by the franchises sold to plaintiff by the City of Los Angeles.

VI.

The Court erred in making the decree and in fixing and/or allowing the charge and collection by plaintiff of rates of fare greater than and different from those fixed and established in and by the franchise-contracts entered into and existing between plaintiff and intervener-defendant City of Los Angeles, and in failing to hold that plaintiff was and is bound by all of the terms and provisions of said franchises, including the provisions for rates of fare, for the reason that said Court did not and does not now possess jurisdiction to change or vary the said rates of fare so fixed and established.

VII.

The Court erred in making the decree and in finding and/or holding that defendant Railroad Commission, either in and by its Decision and Order No. 9029, or otherwise, has ever acted to change the basic five-cent fare in force upon plaintiff's street railway system, for the reason that the record herein discloses upon its face that said decision and order never did and never has become an effective decision and order of said Commission, and was and is ineffectual for any purpose whatsoever, and further for the reason that the record discloses upon its face that the Railroad Commission has never made, issued or promulgated any order, decision or rule changing the rates of fare upon plaintiff's street railway system.

VIII.

The Court erred in making the decree and in failing to hold that plaintiff entered into valid and binding contracts with the City of Los Angeles when it purchased its franchises and filed approved bonds for the faithful performance of all terms thereof.

IX.

The Court erred in granting the decree and in failing to hold that plaintiff is bound by the

rate provisions in each of its franchises purchased from the City unless or until said provision should be changed by lawful and effective order of the Railroad Commission; and in failing to hold that plaintiff under and by its said franchise-contracts limited itself to charging a basic five-cent fare, subject to change only by the police power of the State, as a part of its consideration for the grant to it of the right to operate a street railroad on the streets of said City.

X.

The Court erred in making the decree and in finding and holding that defendant Railroad Commission had or has acted to change, alter or affect the rates fixed in and by the franchise-contracts, or any of them, entered into and existing between plaintiff and the City of Los Angeles.

XI.

The Court erred in making the decree and in finding and holding that a failure and refusal by defendant Railroad Commission to change the rates fixed in and by the franchise-contracts entered into and existing between plaintiff and the City, either by its Decision and Order No. 19,521, or otherwise, is either a complete or any exercise of that Commission's power over the rates specified in said franchises, for the reason that such failure and refusal to change said rates did not and could not operate to affect said rates, or any of them, in any manner, or to give the said Court jurisdiction thereover.

XII.

The Court erred in making the decree and in finding and holding that the denial by defendant Railroad Commission of plaintiff's application (No. 13,323) for authority to increase its rates of fare constituted such action or any action with regard to said rates as to give to said Court any jurisdiction or authority over said rates.

XIII.

The Court erred in making the decree and in finding and holding that the denial by defendant Railroad Commission, of the application of plaintiff for increased rates in the proceedings which resulted in the prosecution of this cause 'followed as it was and is by the necessary effect of enforcing the rate, was an exercise of jurisdiction and that a situation was created wherein the power of the Federal Court to enjoin, if confiscation is effected by the order, is ample,' for the reason that no action was or has been taken by defendant Railroad Commission, which would operate to change or alter any of the rates fixed in and by the franchise-contracts entered into and existing between plaintiff and the City of Los Angeles.

XIV.

The Court erred in making the decree and in holding that the Federal Court may exercise or force the exercise of the police power of a state either to change the terms of or to abrogate the franchises sold to plaintiff by the City of Los Angeles, or otherwise."

ARGUMENT.

In arguing that the Court erred in the particulars above specified in the recited assignment of errors appellant Railroad Commission of California will advance the following propositions:

I. Appellee's franchises are contracts.

II. The City of Los Angeles possessed authority to make such contracts and impose rate conditions and provisions therein.

III. Where a valid contract fixing rates has been entered into between a city and a public utility there is no confiscation.

IV. The contracts here were binding as between the parties until the Commission exercised the power delegated to it by the Legislature by increasing the contract rate in the manner provided by the Public Utilities Act of California.

V. The Court erred in holding that the Railroad Commission by its orders of 1921 and 1928 abrogated the rates fixed in the various franchise contracts in question.

I. APPELLEE'S FRANCHISES ARE CONTRACTS.

The record shows that of a total of one hundred two (102) franchises granted to the Los Angeles Railway Corporation and its predecessors in interest by the City of Los Angeles, seventy-three of them provide in substance that the grantee of the franchises shall have the right to charge five cents and no more as fare for any distance over said road, or any of its branches, while eighteen (18) of them, all granted subsequent to 1919, provide in substance that the grantee shall charge not to exceed five cents per ride, except upon a showing before a competent authority having jurisdiction over rates of fare, that such greater charge is justified. (R. 388.) Practically all franchises granted by the City of Los Angeles to said company and its predecessors in interest prior to the year 1919 contain a provision of the type first mentioned, that is, definitely providing that the rate of fare shall not exceed five cents per ride. (R. 387-436; particularly Exhibit "C," R. 397-402 and Exhibit "D," R. 402-413.) An example of such a franchise

is Ordinance 2532 (NS) granted in 1894 and now in full force and effect, which provides in part as follows (R. 397):

"Provided, that in all cases where this franchise is granted over streets now occupied by other lines of street railway owned by persons or corporations, whether named herein or not, that said W. D. Larabee, and his assigns, shall have the right to operate over any and all such tracks *in accordance with and limited only by the statutes of the state of California applicable there to;* and in case the gauge of the tracks of said other persons or corporations shall not conform to the gauge of the tracks of said W. D. Larabee, or his assigns, then the said W. D. Larabee, or his assigns, shall be permitted to lay a third rail over the distance traversed by said two roads jointly." (Italics ours)

"Section 3. *That the rate of fare for any distance along said road or its branches, one way, shall not exceed 5 cents for one passenger,* and shall transfer at connecting points on the lines of said grantee or his assigns or lines which said grantee or his assigns may operate so as not to return passengers in the general direction from which they came, and that persons under eighteen years of age who attend the public schools of said city, shall be required to pay but half fare, provided said pupils shall purchase their tickets in quantities of at least one dollar's worth at a time; such tickets to be available only between the hours of 8 a. m. and 6 p. m., in actual passage to and from school; and said grantee, or assigns, shall sell such tickets whenever requested to do so by a pupil who shall present a certificate from a teacher approved by the Superintendent of Schools of the City, that he or she is such pupil of said schools.

"And further, that said grantee, or assigns, shall carry policemen and firemen and letter carriers, Mayor and Councilmen, free on said cars

when on duty, subject at all times to the rules of the road.

"Provided further, that said grantee, or assigns, shall, on or before December 15th, of each year, pay to the City Tax and License Collector, the annual license upon each car fixed by the existing ordinance of said city.

"Section 4. The above rights and privileges are granted upon the express condition that work upon that portion known and described as the Kuhrts-Street Line of said road and the line from Estrella Avenue to the west city limits on Washington Street shall be commenced within sixty days, and completed, equipped and in operation as an electric road for its full length within eight months from the date hereof. The remaining portion of said railroad line shall be fully equipped and completed as provided herein within two years from the date of the approval of this ordinance. *Provided further, that this franchise is granted upon each and every condition herein set forth, and a failure to comply with each or any of said conditions shall work an immediate forfeiture of all the rights herein granted.*

"Section 5. *The said grantee or assigns is hereby required to file a written acceptance of the terms and conditions hereof* with the City Clerk of said City within thirty days after the passage of this ordinance, together with a bond of not less than ten thousand dollars, for the faithful carrying out of the terms of this franchise." (Italics ours.)

All such franchises granted to the Los Angeles Railway Corporation by the City of Los Angeles were granted in accordance with the provisions of various general franchise acts requiring the city to advertise and sell the privilege to operate railways upon the public streets to the highest bidder. Further reference will later be made to such statutes. It is suffi-

cient at this time to note that from such offers by the City of Los Angeles and the acceptance thereof by the grantee, and from the terms of the above quoted franchise ordinance and those of similar ordinances set forth in the record (R. 357-413) it is apparent that the respective parties intended that such franchises should constitute contracts binding upon them in all respects during the terms of the grants.

It has been the unanimous holding of the Courts that franchises from municipal corporations for the operation of street railway lines over their streets are contracts, and as such are subject to the general principles of contract law. In *Columbus Railway and Power Company v. City of Columbus* (1919), 249 U. S. 399, 408, the Supreme Court of the United States definitely held that such franchises constitute binding contracts and in that regard stated:

> "upon acceptance of the ordinance it became a binding contract, governed by the rates of fare authorized to be charged during the period of twenty-five years for which the ordinance ran; that the rates contracted for became binding upon the city, and could not be altered by subsequent municipal action consistently with the constitutional rights of the railway company."

We shall later quote at length from this case in connection with our discussion of the effect of such a contract. At this point suffice it to say that this determination does not stand alone but is representative of the unanimous holdings of the Courts in relation to such franchises. Thus, in the earlier case of *City of Cleveland v. Cleveland City Railroad Company,* (1904) 194 U. S. 517, 536, the Supreme Court declared of a similar franchise ordinance:

> "* * * we can see no escape from the conclusion that the ordinances were intended to be agreements binding upon both parties, definitely fixing the rates of fare which might be thereafter charged."

The question as to the nature of a franchise sold by a municipality and accepted by a public utility has been before the Supreme Court and appellate courts of the State of California several times, and on each occasion, these Courts have held such franchises to be contracts.

The case of *Los Angeles Railway Company v. Los Angeles,* (1907) 152 Cal. 242 involved the question of a forfeiture of a franchise granted to the plaintiff by the City of Los Angeles. The railroad sought to enjoin defendant city from interfering with the railroad in exercising its alleged franchise rights after it had failed to construct a part of its road in accordance with the terms of said franchise contract. The lower court refused to grant the railroad an injunction, which holding was affirmed by the Supreme Court. In its decision at page 244 the Supreme Court states:

> "It is argued in support of this view that nothing is involved in this controversy beyond the respective rights of the plaintiff and defendant growing out of and dependent upon *the ordinance granting the franchise, which, it is contended, embraces all the terms of the contract,* and which upon the received construction of grants providing for forfeitures upon breach of conditions subsequent, means no more than that their breach entitles the grantor to maintain an action to enforce the forfeiture. The respondent, on the other hand, contends that section 502 of

the Civil Code in force at the date of the grant *is a part of the contract,* and that it is self-executing in working a forfeiture for failure to complete the construction of the road within the time specified in the ordinance.

"We agree with the appellant that the rights of the parties are measured by the terms of their contract, but we think the statute (Civ. Code, sec. 502) enters into the contract, and that its provisions must be taken into account *in construing the contract.* The city in granting a street-railway franchise is but an agency of the state, and if there were any conflict between the ordinance containing the grant and the general laws of the state, the latter would govern. In this case, however, there is no conflict." (Italics ours.)

In the case of *St. Helena v. San Francisco etc. Railway,* (1914) 24 Cal. App. 71, the city had granted the railroad a franchise to operate its street cars upon the streets of the city but did not provide for the paving of the street between its tracks. Thereafter the city, desiring to improve an entire street passed an ordinance requiring the street to be paved between the tracks by the railway company. This action was brought by the city to require the railway company to comply with the provisions of that ordinance. The railway company contended that said ordinance violated the terms of the franchise granted to it, which constituted a contract as to all of its terms binding upon both parties. The Court stated in part (page 74):

"It is not disputed that said franchise constitutes a contract that is binding upon both parties, but it is claimed by appellant—and justly so under the authorities—that in case of doubt as to

the interpretation of said franchise it must be construed in favor of the municipality and against the railroad.

"The first consideration that attracts attention is the provision in the *contract* that the franchise is granted 'subject to all laws or municipal regulations now in force, or that may be hereafter enacted relating to the control, or use, digging in or occupying of the public streets.' Of course, regardless of such agreement, it is well settled that the municipality cannot abdicate its functions or by contract divest itself of power to control the streets for the benefit of the public. 'The improvement, regulation and control of the highways within a municipality call for the exercise of a delegated governmental power, a function which the municipality itself, neither by an ordinance nor by contract, can surrender or impair.' (*McNeil v. City of South Pasadena,* 166 Cal. 153, (135 Pac. 32).)

"But the parties to the said franchise saw fit to stipulate expressly that the valuable privilege granted should be subject to all laws and municipal regulations that might be adopted in pursuance of this power of control and regulation that is committed to the municipal authorities. It is difficult to understand how the parties could have expressed more clearly such intention.

* * * * * * *

"The fact that these matters of detail *are not specified in the contract* cannot, of course, impair or affect the power of the municipality in the exercise of its control of the streets to impose such regulations. As suggested by appellant, it is plain that the franchise is not a limitation of the power of the municipality in these matters, *but it is rather a limitation upon the power of the railroad* and any doubt about authority in the premises must be resolved in favor of the municipality." (Italics ours.)

A petition was filed in the Supreme Court to have the case heard there. The Supreme Court denied the petition and made the following comment (page 80):

> "The respondent, in support of its petition, contends that the franchise under which the respondent is operating does not require it to pave the streets, but only to grade them and keep them in proper repair between the tracks and for two feet on each side thereof, and that the police power does not embrace the authority to compel a street railway occupying the streets of a city to pave the streets, between its tracks, or elsewhere, or at all; *that such power must be founded upon the contract between the city and the company whereby the franchise is granted, or upon some valid contract obligation of the company.* It is unnecessary to consider whether or not the terms of the franchise of the defendant requires it to pave the streets. The franchise was granted under the provisions of section 498 of the Civil Code and that section requires street railroads to 'plank, pave, or macadamize the entire length of the street, used by their track, between the rails, and for two feet on each side thereof.' This can only mean that such company must either plank, pave, or macadamize that part of the street, as the proper city authority may lawfully direct. *It is a constituent part of the contract granting the franchise,* though not expressed therein in terms. The company is therefore bound by contract to pave the street in accordance with the city ordinance, and it is not necessary to say whether or not the city, by virtue of its police powers alone, could compel it to do so." (Italics ours.)

In the case of *City of San Diego v. Kerchhoff,* (1920) 49 Cal. App. 473 the City had brought an action to recover on a bond given to insure the performance of the terms of a franchise granted by the

city for the construction of a railroad. The Court stated at page 481:

> "The franchise of a street railroad finds its origin in the action of the municipality—*it is a contract between the city and the grantee.*" (Italics ours.)

A decision similar to the one last mentioned is that of *Albany v. United States Guaranty & Fidelity Company,* (1918) 38 Cal. App. 466 wherein an action was brought to recover upon a bond for failure to construct a railroad in accordance with the terms of a franchise. The Court at page 468 stated:

> "At the instant of the grant of the franchise, (a street railway franchise) the franchise became an *irrevocable contract* and the property of E. A. Gowe, of which he could not be divested by the city of Albany for a period of four months, during which time he was to commence work." (Italics ours.)

Thus, in numerous decisions we find that the California Courts have held franchises to be contracts. It is true that none of the cases above cited specifically rule upon the power or authority of cities in California or the City of Los Angeles, in particular, to contract in street railway franchises as to rates of fare to be charged. There are no California decisions ruling upon this specific point. However, the fact that the City of Los Angeles possessed and now possesses such authority to contract as to rates becomes apparent upon a consideration of certain California statutes. We shall now turn to an analysis of these legislative enactments.

II. THE CITY OF LOS ANGELES POSSESSED AND NOW POSSESSES AUTHORITY TO MAKE SUCH CONTRACTS AND IMPOSE RATE CONDITIONS AND PROVISIONS THEREIN.

Under the law of California the City of Los Angeles possessed and now possesses authority to enter into franchise contracts with public utility street railroad companies and impose in such contracts provisions and conditions with reference to the rates of fare to be charged.

By Section 470 of the Civil Code of California it is provided:

> "No railroad corporation must use any street, alley or highway, or any of the land or water, within any incorporated city or town, unless the right to so use the same is granted by a two-third vote of the town or city authority from which the right must emanate." (Enacted Mar. 21, 1872.)

Section 497 of the Civil Code of California provides in part:

> "*Authority to lay railroad tracks through the streets and public highways of any incorporated city, city and county, or town, may be obtained for a term of years not exceeding fifty,* from the trustees, council, or other body to whom is intrusted the government of the city, city and county, or town, *under such restrictions and limitations, and upon such terms and payment of license tax, as the city, city and county,* or town authority may provide." (Italics ours.) (Calif. Stats., 1891, p. 12.)

Section 501 of the Civil Code of California provides:

> "The rates of fare on the cars must not exceed ten cents for one fare for any distance under three miles, and in municipal corporations of the first class must not exceed five cents for each pas-

senger per trip of any distance in one direction either going or coming, along any part of the whole length of the road or its connections. The cars must be of the most approved construction for the comfort and convenience of passengers, and provided with brakes to stop the same, when required. A violation of the provisions of this section subjects the corporation to a fine of one hundred dollars for each offense." (Cal. Stats. 1903, p. 172.)

In the sale of street railroad franchises pursuant to the above cited Civil Code provisions the City of Los Angeles has been governed in its procedure by various franchise acts. Prior to 1893 no definite procedure for the sale of franchises to the highest bidder had been provided by the legislature. The Franchise Act of 1893 (California Statutes 1893, p. 288), however, provided a definite procedure to be followed in the sale of such franchises and read in part as follows:

"Section 1. Every franchise or privilege to erect or lay telegraph or telephone wires, to construct or operate railroads along or upon any public street or highway, or to exercise any other privilege whatever hereafter proposed to be granted by the Board of Supervisors, Common Council, or other governing or legislative body of any county, city and county, city, town, or district within this State, shall be granted upon the conditions in this Act provided, and not otherwise. The fact that an application for such franchise or privilege has been made to such Board of Supervisors, Common Council, or other governing or legislative body, together with a statement that it is proposed to grant the same, must first be advertised in one or more daily newspapers of the county, city and county, city, town, or district wherein the said franchise or privilege is to be exercised. Such advertisement must continue every day for at least ten days, and must com-

mence at least thirty days before any further action of the Board of Supervisors, Common Council, or other governing or legislative body. The advertisement must state the character of the franchise or privilege proposed to be granted, the term of its continuance, and, if a street railroad, the route to be traversed, and the day on which tenders will be received for the same. On the day so stated, the Board, or other governing or other legislative body herein mentioned, must meet in open session and read the tenders. The franchise or privileges must then be awarded to the highest bidder; provided, however, that nothing in this section shall affect a special privilege granted for a shorter term than two years."

The Franchise Act of 1893 was twice amended in 1897 (California Statutes 1897, pages 135 and 176.)

In 1901 the Legislature enacted a new franchise act (Stats. 1901, p. 265) which dealt with this same subject. Thereafter in 1905 (Stats. 1905, p. 777) an entirely new act was adopted which repealed the former acts. This later enactment, known as the Broughton Franchise Act, was amended in 1909 (California Stats. 1909, p. 125,) and in 1915 (California Stats. 1915, p. 1300.)

By the 1915 amendment to the Broughton Franchise Act it was expressly provided as follows:

"Every franchise or privilege to erect or lay telegraph or telephone wires, to construct or operate street or interurban railroads upon any public street or highway, to lay gas pipes for the purpose of carrying gas for light, heat or power, to erect poles or wires for transmitting electricity for light, heat or power, along or upon any public street or highway, or to exercise any other privilege whatever hereafter proposed to be granted

by boards of supervisors, boards of trustees or common councils, or other governing or legislative bodies of any county, city and county, city or town within this state, except steam railroads and except telegraph or telephone lines doing an interstate business, and renewals of franchises for piers, chutes or wharves, shall be granted upon the conditions in this act provided, and not otherwise. *The grantor may, however, in such franchise impose such other and additional terms and conditions not in conflict herewith, whether governmental or contractual in character, as in the judgment of the legislative body thereof are to the public interest.*" (Amendment approved June 8, 1915, Stats. 1915, p. 1300.) (Italics ours.)

There is no necessity of developing at length or in detail the effect of the other above mentioned amendments. Suffice to say that since 1893 the City of Los Angeles, in granting franchises, has been required by law to *sell* franchises granted by it for the use of its streets. Under the procedure prescribed, when application is made for a franchise the city advertises that it will make a sale of such franchise granting the rights desired in said application. The notice of sale sets forth all the terms and conditions upon which the franchise will be sold. The franchise is awarded to the highest bidder and an ordinance is passed definitely defining the rights granted to the purchaser and the terms and conditions of such grant. Upon acceptance by the grantee this franchise becomes a binding contract. The purchaser and grantee upon acceptance are bound by all the terms and conditions contained in the franchise.

The City of Los Angeles is a chartered city and has been governed since 1850 by a charter approved by

the State of California. The earliest charter with which we need be concerned in this proceeding is the charter of 1889 (California Stats. 1889, p. 455), adopted by the city and approved by the legislature in that year pursuant to the provisions of Section 8, Article II of the California Constitution. By an amendment to said charter of 1889, approved by the legislature in 1905 (California Stats. 1905, p. 994), the City of Los Angeles was expressly authorized by the State to insert in franchise contracts provisions and conditions fixing for the term of the grant the rate of fare to be charged. The said charter amendment of 1905 provided in part:

> "*No franchise, right or privilege in, on, through, across, under or over any street, avenue, alley, bridge, viaduct or other public place, and no other franchise whatever, granted by the city to any corporation, association or individual, shall be granted except by an ordinance passed by vote of two-thirds (2/3) of the whole council, nor for a longer period than twenty-one years.* Such grant and any contract in pursuance thereof shall provide that at the option of the city, declared not more than three (3) years nor less than six months before the termination of such grant, the plant and property, if any, belonging to or used by the grantee, or his or its successors in interest, in the streets, avenues and other public places shall, at the termination of said grant, upon the payment of a fair valuation thereof, be and become the property of the city; but the grantee shall be entitled to no payment because of any valuation derived from the franchise. Provided, however, that such option shall not be exercised unless at the time of exercising the same the city shall be authori[illegible]nd empowered to acquire and operate such [illegible]ant and property. *Every grant shall specify the mode of determining any valuation therein provided for and the time and*

mode of payment, and shall make adequate provision by way of forfeiture of the grant or otherwise to secure efficiency of public service at reasonable rates and the maintenance of the property in good order throughout the term of the grant."

The above quoted provision of the city charter continued in force until 1911 when it was superseded by further amendment to Section 2 of said charter of 1889 (California Stats. 1911, pages 2051, 2061, 2063.) Subdivisions 12 and 30 of Section 2 of said charter as amended in 1911 provided as follows:

"Sec. 2—The city of Los Angeles, in addition to any other powers now held by, or that may hereafter be granted to it under the constitution or laws of the state, shall have the right and power:

12—"To fix and collect rates or charges for the use of and for all products of, or service by, any public utility conducted or operated by the city.

30—"To fix and determine the rates or compensation to be collected by any person, firm or corporation, for water, gas, electric current, refrigeration, heat, light, power, telephones, telephone service or connections, or the conveyance of passengers or freight, by means of street railway cars, hacks, cabs, or other cars or vehicles for hire, or for the products of, or service by, any other public utility operated or conducted within the city limits; and to prescribe the character and quality of any public utility service."

The delegation of power to regulate rates of public utility street railroad companies *first* given to the City of Los Angeles by the above quoted charter amendments was further augmented in 1911 by the amendment of the California Constitution, Section 19,

Article XI, adopted October 10, 1911, which amendment provided in part as follows:

> "Any municipal corporation may establish and operate public works for supplying its inhabitants with light, water, power, heat, transportation, telephone service or other means of communication. Such works may be acquired by original construction or by the purchase of existing works, including their franchises or both. *Persons or corporations may establish and operate works for supplying the inhabitants with such services upon such conditions and under such regulations as the municipality may prescribe under its organic law, on condition that the municipal government shall have the right to regulate the charges thereof.* * * *" (Italics ours.)

It is interesting to note that prior to the adoption of the above quoted charter amendments of 1911, the charter of 1889 did not give to the City of Los Angeles power to regulate the rates of fare charged by public utility street railway companies operating within the city. Nor did any other provision of law grant to the City of Los Angeles, prior to 1911, such power to regulate rates. It was only logical, therefore, that the charter amendment of 1905 above quoted should expressly authorize the City of Los Angeles, in the granting of franchises for the use of streets, to "make adequate provision by way of forfeiture of the grant or otherwise to secure an efficiency of public service at reasonable rates and the maintenance of the property in good order throughout the term of the grant." Not then being possessed of the power to regulate rates, the only manner in which the City of Los Ange-

les could possibly secure reasonable rates throughout the term of the grant was by expressly contracting with the grantee of the franchise as to the rate of fare to be charged during the term of the grant.

We respectfully submit that under the California law the City of Los Angeles, in granting franchises to public utility street railroad companies, was authorized by the state to include in such franchises provisions and restrictions as to rates of fare, Civil Code, Section 497 above quoted having expressly delegated to cities authority to grant such franchises "under such restrictions and limitations, and upon such terms * * * as the city * * * may provide." The City of Los Angeles most certainly enjoyed the power to so contract from 1905 to 1911, by virtue of the above quoted provisions of the charter amendment of 1905 (California Stats. 1905, p. 994), and during this period no less than twenty franchises were granted to appellee Los Angeles Railway Corporation definitely fixing the rate of fare to be charged at not to exceed five cents per ride (R. 385-397, particularly 396.) And, as above pointed out, the power of the city to contract as to rates of fare delegated under the provision of the California Civil Code, Section 497, was further augmented in 1915 by the amendment of the Broughton Franchise Act (Cal. Stats. 1915, p. 1300.)

In 1914 by the amendment of Section 23 of Article XII of the California Constitution the entire control over rates of public utilities was expressly reserved to the Railroad Commission of California and municipalities were divested of all power over the regula-

tion of rates.[1] In order that street railroad rates of fare theretofore fixed in various franchises might be preserved to the cities and the holders of such fran-

(1) Section 23 Article XII California Constitution as amended in 1914 provides in part as follows:

"* * * The railroad commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the legislature, and the right of the legislature to confer powers upon the railroad commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution. From and after the passage by the legislature of laws conferring powers upon the railroad commission respecting public utilities, all powers respecting such public utilities vested in boards of supervisors, or municipal councils, or other governing bodies of the several counties, cities and counties, cities and towns, in this state, or in any commission created by law and existing at the time of the passage of such laws, shall cease so far as such powers shall conflict with the powers so conferred upon the railroad commission; *provided, however, that this section shall not affect such powers of control over public utilities as relate to the making and enforcement of local, police, sanitary and other regulations, other than the fixing of rates, vested in any city and county or incorporated city or town as, at an election to be held pursuant to law, a majority of the qualified electors of such city and county, or incorporated city or town, voting thereon, shall vote to retain, and until such election such powers shall continue unimpaired;* but if the vote so taken shall not favor the continuation of such powers they shall thereafter vest in the railroad commission as provided by law; and provided further, that where any such city and county or incorporated city or town, shall have elected to continue any of its powers to make and enforce such local, police, sanitary and other regulations, other than the fixing of rates, it may, by vote of a majority of its qualified electors voting therein, thereafter surrender such powers to the railroad commission in the manner prescribed by the legislature; *and provided, further, that this section shall not affect the right of any city and county or incorporated city or town, to grant franchises for public utilities upon the terms and conditions and in the manner prescribed by law.* Nothing in this section shall be construed as a limitation upon any power conferred upon the railroad commission by any provision of this Constitution now existing or adopted concurrently herewith." (Amendment adopted November 3, 1914.) (Italics ours.)

chises Section 27 of the Public Utilities Act (Stats. 1911, Extra Session, p. 18) was amended in 1915 to provide as follows:

> "No street or interurban railroad corporation shall charge, demand, collect or receive more than five cents for one continuous ride in the same general direction within the corporate limits of any city and county, or city or town, except upon a showing before the commission that such greater charge is justified; *provided, that until the decision of the commission upon such showing, a street or interurban railroad corporation may continue to demand, collect and receive the fare lawfully in effect on November 3, 1914.* Every street or interurban railroad corporation shall upon such terms as the commission shall find to be just and reasonable furnish to its passengers transfers entitling them to one continuous trip in the same general direction over and upon the portions of its lines within the same city and county, or city or town, not reached by the originating car." (Stats. 1915, p. 115.) (Italics ours.)

Subsequent to the amendment of 1914 to Section 23 of Article XII of the California Constitution, the city in the granting of franchises to appellee, Los Angeles Railway Corporation, with but few exceptions provided for a rate of fare not to exceed five cents with the qualifying provision that the fare might be changed by a proper showing before a competent authority having jurisdiction over rates of fare (R. 397). An example of this type of provision is found in Exhibit "E" (R. 386, 414, 420, 24th paragraph).

It should be noted that although the amendment of Section 23 of Article XII of the California Constitution in 1914, above quoted, divested the City of Los Angeles of its power of regulation of rates of street

railway companies (which power it had enjoyed since 1911 under the charter amendment and amendment of Section 19 of Article XI of the California Constitution, both above quoted), it did not divest the City of Los Angeles of its power to contract as to such rates in the execution of contractual franchises. In fact it will be noted that said Section 23 of Article XII, after providing that the amendment should not affect the powers of control over public utilities enjoyed by cities, other than the regulation of rates, contained the provision " * * * and provided, further, that this section shall not affect the right of any city and county or incorporated city or town, to grant franchises for public utilities upon the terms and conditions and in the manner prescribed by law."

Within six months of the date of the adoption of the amendment of Section 23 of Article XII of the Constitution (adopted November 3, 1914) the California legislature by the 1915 amendment to the Broughton Franchise Act (California Stats. 1915, p. 1300), above quoted, augmented the provisions of California Civil Code Section 497, and again provided in substance that cities should have the power and authority to insert rate of fare provisions in contractual franchises. The statutory amendment of 1915, it will be recalled, expressly provided that cities might insert in franchises for the operation of street railway lines "such other and additional terms and conditions not in conflict herewith, whether governmental or contractual in character, as in the judgment of the legislative body thereof are to the public interest."

The District Court in its opinion expressed some doubt as to whether or not the City of Los Angeles ever possessed the power to contract as to the rates of fare to be charged by street car companies operating within the city. The Court in its opinion states in part:

> " * * * we think it may well be doubted whether the State of California ever delegated power to the city to contract with a public utility on the subject of rates so as to restrict future regulation.
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> * * * * * * *
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> "Section 497 of the Civil Code of California of 1891, page 121, provides that authority to lay railroad tracks through streets of a city could be obtained for a term of years not exceeding fifty, from the council under such restrictions and limitations and upon such terms as the City may provide. By the Franchise Act of 1893 (Cal. Stat. 1893, p. 288), a franchise to construct or operate railroads upon any public street of a city or to exercise any other privilege proposed to be granted by the common council, shall be granted upon the conditions of that act and not otherwise. We perceive no provision in that act by which power is given to the city over rates to be included in any franchise granted. The statute of 1901, page 265, and its amendments provided that municipalities could grant franchises upon the conditions in the act provided and not otherwise, but there were no words expressly delegating power to a city to fix rates by contract, and as said by the Supreme Court in Home Tel. & Tel. Co. v. City of Los Angeles, 211 U. S. 265, the first section of the act contained 'an emphatic caution against reading into the act any conditions' not clearly expressed in the act itself. No decisions of the Supreme Court of the state directly decide the question, and we pass it, merely saying that we are inclined to the view that in

> the absence of an express grant to the city of power to fix binding rates in franchises, no such power exists; nor can it be implied under the language of the act of 1901, or other statutes called to our attention (Stanislaus County v. San Joaquin and K. R. Canal Co., 192 U. S. 200; City of San Antonio v. San Antonio Public Service Co., 255 U. S. 547; San Francisco Oakland Terminal Co. v. City of Alameda, 226 Fed. 889; Knoxville Gas Co. v. City of Knoxville, 261 Fed. 283). It is perfectly clear, we think, that at least since the adoption of the constitutional provision heretofore cited (Sec. 23 of Art. XII, adopted Nov. 3, 1914), any provision with respect to rates in franchises granted since 1914 could not be considered as binding contracts of inviolable nature." (R. 540-541.)

We respectfully submit that the Court in thus expressing doubt as to the power of the city to contract as to rates was in error and failed to properly construe Section 497 of the Civil Code and failed to consider the charter amendment of 1905 and the 1915 amendment to the Broughton Franchise Act, both above quoted. We contend that under these enactments the City of Los Angeles possessed and now possesses the power to contract as to rates of fare in the execution of such street railroad franchises. Thus the decision of the United States Supreme Court in *Home Telephone and Telegraph Co. v. City of Los Angeles* (1908), 211 U. S. 265, cited by the Court, is not applicable in the instant case because of the existence of express statutory authority to the City of Los Angeles to contract as to rates.

It should be pointed out that Section 21 of Article I of the California Constitution of 1879 provides in

part that "no special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislature * * *." This constitutional limitation, of course, imposes no limitation on the power of the legislature of the state to authorize a city to contract as to rates and to fix by contractual franchises rates of fare from which the parties may not recede. This point was expressly ruled upon by this Court in *Opelika v. Opelika Sewer Co.*, 265 U. S. 215, where the Constitution of Alabama provided no law "making any irrevocable or exclusive grants of special privileges or immunities shall be passed by the legislature; and every grant of a franchise, privilege or immunity *shall forever remain subject to revocation, alteration or amendment.*" In that case the contract was sustained as binding *between the parties even though subject to revocation or alteration by the State.* The distinction was clearly pointed out by the Court in the following language:

> "No doubt it is true also that the Legislature could not make such a grant indirectly by giving power to a city to make it. *But we see no reason to doubt that the legislature, without impairing its power to revoke, may give a city power to make a contract from which the city, of its own motion may not recede. The city has not attempted to* recede from it." (p. 218.)

III. WHERE A VALID CONTRACT FIXING RATES HAS BEEN ENTERED INTO BETWEEN A CITY AND A PUBLIC UTILITY THERE IS NO CONFISCATION.

It has been conclusively settled by an unbroken line of decisions of this Court that where there is a contract there is no confiscation.

Detroit v. Detroit Citizens Ry. Co. (1902), 184 U. S. 368, 383, 384, 385, 388;

City of Cleveland v. Cleveland City Ry. Co. (1904), 194 U. S. 517, 533;

Vicksburg v. Vicksburg Waterworks Co. (1907), 206 U. S. 496, 508, 515;

Detroit United Ry. v. Michigan (1916), 242 U. S. 238, 249, 253;

Columbus Ry. & Power & Light Co. v. City of Columbus (1919), 249 U. S. 399, 412, 414;

Southern Iowa Electric Co. v. Chariton (1921), 255 U. S. 539, 542;

San Antonio v. San Antonio Public Service Co. (1921), 255 U. S. 547, 556;

Paducah v. Paducah Railway (1923), 261 U. S. 267, 273;

Georgia Railway & Power Co. v. Town of Decatur (1923), 262 U. S. 432, 437, 438;

City of Opelika v. Opelika Sewer Co. (1924), 265 U. S. 215, 217;

St. Cloud Public Service Co. v. City of St. Cloud (1924), 265 U. S. 352, 354.

"It has been long settled that a state may authorize a municipal corporation to establish by an inviolable contract the rates to be charged by a public service corporation for a definite term,

not grossly unreasonable in time, and that the effect of such a contract is to suspend, during its life, the governmental power of fixing and regulating the rates. Home Teleph. Co. v. Los Angeles, 211 U. S. 265, 273, 53 L. ed. 176, 182, 29 Sup. Ct. Rep. 50, and cases there cited. And where a public service corporation and the municipality have power to contract as to rates, and exert that power by fixing the rates to govern during a particular time, the enforcement of such rates is controlled by the obligation resulting from the contract, and the question whether they are confiscatory is immaterial." *St. Cloud Public Service Co. v. St. Cloud,* supra, and cases cited.

In *San Antonio v. San Antonio Public Service Company,* supra, Mr. Chief Justice White, in the opinion of the Court, from which there was no dissent, at page 556 said:

"The duty of an owner of private property used for the public service to charge only a reasonable rate, and thus respect the authority of government to regulate in the public interest, and of government to regulate by fixing such a reasonable rate as will safeguard the rights of private ownership, are interdependent and reciprocal. *Where, however, the right to contract exists and the parties, the public, on the one hand, and the private owner, on the other, do so contract, the law of the contract governs both the duty of the private owner and the governmental power to regulate.*"

In *Vicksburg v. Vicksburg Waterworks Co.,* supra, at page 508, the Court says:

"Holding, then, that the plea of *res judicata* must be denied, had the city authority, under the charter of Vicksburg, passed in 1886, to make a binding contract, fixing maximum rates for water

supply to private consumers for a definite period, thirty years in the present case? The grant of legislative power upon its face is unrestricted, and authorizes the city 'to provide for the erection and maintenance of a system of waterworks to supply said city with water, and to that end to contract with a party or parties who shall build and operate waterworks.'

"That a state may, in matters of proprietary rights, exclude itself from the right to make regulations of this kind, or authorize municipal corporations to do so, when the power is clearly conferred, has been too frequently declared to admit of doubt. Los Angeles v. Los Angeles City Water Co., 177 U. S. 558, 44 L. ed. 886, 20 Sup. Ct. Rep. 736; Walla Walla v. Walla Walla Water Co., 172 U. S. 1-7, 43 L. ed. 341-344, 19 Sup. Ct. Rep. 77; New Orleans Waterworks Co. v. Rivers, 115 U. S. 674, 29 L. ed. 525, 6 Sup. Ct. Rep. 273; Freeport Water Co. v. Freeport, 180 U. S. 587-593, 45 L. ed. 679-686, 21 Sup. Ct. Rep. 493.

* * * * * * *

"In the cases generally in this court it will be found that, in determining the matter of contract, the local decisions have been given much weight and, ordinarily, followed. As this is a Mississippi contract, and the power was exercised under the authority of an act of the legislature of that state, we naturally look to the decisions of the courts of that state, particularly to such as had given construction to similar charters at the time the contract was made, with a view to determining the extent of the power conferred."

In *Georgia Railway & Power Co. v. Town of Decatur,* supra, at page 438, the Court says:

"This conclusion, involving, as it does, a construction of the state Constitution and laws and powers of state municipalities, is controlling upon this court, as it has decided many times. See, for example: Old Colony Trust Co. v. Omaha, 230

U. S. 100, 116, 57 L. ed. 1410, 1416, 33 Sup. Ct. Rep. 967; Claiborne County v. Brooks, 111 U. S. 400, 410, 28 L. ed. 470, 474, 4 Sup. Ct. Rep. 489; Richmond v. Smith, 15 Wall. 429, 438, 21 L. ed. 200, 202.

"On the other hand, in deciding the constitutional questions presented, this court will determine for itself whether there is, in fact, a contract, and, if so, the extent of its binding obligations; but will lean to an agreement with the state court. Tampa Waterworks Co. v. Tampa, 199 U. S. 241-243, 50 L. ed. 170-173, 26 Sup. Ct. Rep. 23, and cases cited; Freeport Water Co. v. Freeport, 180 U. S. 587, 595, 45 L. ed. 679, 687, 21 Sup. Ct. Rep. 493; Detroit v. Detroit Citizens' Street R. Co., 184 U. S. 368, 386, 46 L. ed. 592, 607, 22 Sup. Ct. Rep. 410; Milwaukee Electric R. & Light Co. v. Railroad Commission, supra. And considering the question in this light, we see no reason to differ with that court in its view of the validity and binding quality of the contract. The contract being valid, we are not concerned with the question whether the stipulated rates are confiscatory. Southern Iowa Electric Co. v. Chariton, 255 U. S. 539, 542, 65 L. ed. 764, 775, 41 Sup. Ct. Rep. 400; Paducah v. Paducah R. Co. decided February 19, 1923 (261 U. S. 267, ante, 647, 43 Sup. Ct. Rep. 335)."

In *Columbus Railway P. & L. Co. v. City of Columbus,* supra, at page 409, the Court said:

"The contracts were made between the city and the company, and became mutually binding for the period named in the ordinances. This case does not involve the remedies which may be invoked against a street railway company which is or may become insolvent because of conditions arising since it entered into a given contract. The company seeks now by its own action to terminate the contracts, still binding upon it by their terms as to rates of fare to be charged, and

seeks to have the aid of a court of equity by enjoining the city from any further requirement of service under them.

"There is no showing that the contracts have become impossible of performance. Nor is there any allegation establishing the fact that, taking the whole term together, the contracts will be necessarily unprofitable. This case is not like the Denver Waterworks Case, 246 U. S. 178, 62 L. ed. 649, P. U. R. 1918C, 640, 38 Sup. Ct. Rep. 278, and the Detroit Street R. Co. Case, 248 U. S. 429, ante, 341, P. U. R. 1919A, 929, 39 Sup. Ct. Rep. 151, in both of which the franchise to use the streets of the city had expired by limition, and it was sought to require continued operation of a waterworks system in the one case and in the other of a street railway system, under rates which would afford no adequate return to the companies. *In this case the company seeks the aid of a court of equity to avoid contracts duly made and entered into while the same are yet in force.* (Italics ours.)

"We are unable to find in the allegations in this bill any statement of facts which absolves the company from the continued obligation of its contracts unless the facts to which we have referred bring the case, as is contended, within the doctrine of *vis major,* justifying the company in its attempt to surrender its franchise, and be absolved from further obligation.

* * * * * * *

"Particular reliance is had upon the last sentence of the paragraph just quoted. This language was used in interpreting a contract of doubtful import, as the context shows. Such interpretation was made in view of the situation of the parties at the time when the contract was made, and in view of the nature of the undertaking under consideration. It certainly was not intended to question the principle, frequently declared in decisions of this court, that *if a party*

charge himself with an obligation possible to be performed, he must abide by it unless performance is rendered impossible by the act of God, the law, or the other party. Unforeseen difficulties will not excuse performance. Where the parties have made no provision for a dispensation, the terms of the contract must prevail. United States v. Gleason, 175 U. S. 588, 602, 44 L. Ed. 284, 289, 20 Sup. Ct. Rep. 228, and authorities cited; Carnegie Steel Co. v. United States, 240 U. S. 156, 164, 165, 60 L. ed. 576, 578, 579, 36 Sup. Ct. Rep. 342. The latest utterance of this court upon the subject is found in Day v. United States, 245 U. S. 159, 62 L. ed. 219, 38 Sup. Ct. Rep. 57, in which it was said: 'One who makes a contract can never be absolutely certain that he will be able to perform it when the time comes, and the very essence of it is that he takes the risk within the limits of his undertaking. The modern cases may have abated somewhat the absoluteness of the older ones in determining the scope of the undertaking by the literal meaning of the words alone. The Kronprinzessin Cecilie (North German Lloyd v. Guaranty Trust Co.) 244 U. S. 12, 22, 61 L. ed. 960, 965, 37 Sup. Ct. Rep. 490. But when the scope of the undertaking is fixed, that is merely another way of saying that the contractor takes the risk of the obstacles to that extent.'

"In the present case the terms of the contract are not doubtful. The term for which the company was given the right to use the streets of the city was definitely stated, and the terms, including the rates of fare which the company might charge, were explicitly laid down. There is no occasion to interpret general terms in the light of the intention of the parties or the circumstances of the case." (Italics ours.)

In *Southern Iowa Electric Co. v. Chariton,* supra, at page 542, the Court said:

"* * * where, however, the public service corporations and the governmental agencies dealing with them have power to contract as to rates, and exert that power by fixing by contract rates to govern during a particular time, *the enforcement of such rates is controlled by the obligation resulting from the contract, and therefore the question of whether such rates are confiscatory becomes immaterial.* (Freeport Water Co. v. Freeport, 180 U. S. 587, 593, 45 L. ed. 679, 686, 21 Sup. Ct. Rep. 493; Detroit v. Detroit City R. Co. 184 U. S. 368, 46 L. ed. 592, 22 Sup. Ct. Rep. 410; Knoxville Water Co. v. Knoxville, 189 U. S. 434, 437, 47 L. ed. 887, 891, 23 Sup. Ct. Rep. 531; Cleveland v. Cleveland City R. Co. 194 U. S. 519, 48 L. ed. 1103, 24 Sup. Ct. Rep. 756; Home Teleph. & Teleg. Co. v. Los Angeles, 211 U. S. 265, 273, 53 L. ed. 176, 182, 29 Sup. Ct. Rep. 50; Minneapolis v. Minneapolis Street R. Co. 215 U. S. 417, 54 L. ed. 259, 30 Sup. Ct. Rep. 118; Columbus R. Power & Light Co. v. Columbus, 249 U. S. 399, 63 L. ed. 669, 6 A. L. R. 1648, P. U. R. 1919D, 239, 39 Sup. Ct. Rep. 349)." (Italics ours.)

In *Paducah v. Paducah Ry. Co.,* supra, at page 273, the Court said:

"If the franchise here amounts to a contract binding the company to the fare stated therein as a maximum, as claimed by the city, for the whole franchise term of twenty years, *it cannot complain and there is no ground for relief; and the question whether such rates are too low to give a reasonable return or sufficient is immaterial.*" (Italics ours.)

IV. THE CONTRACTS HERE WERE BINDING AS BETWEEN THE PARTIES UNTIL THE COMMISSION EXERCISED THE POWER DELEGATED TO IT BY THE LEGISLATURE BY INCREASING THE CONTRACT RATE IN THE MANNER PROVIDED BY THE PUBLIC UTILITIES ACT OF CALIFORNIA.

It is conceded by this appellant that the Railroad Commission of California is vested with power to change the rates fixed in various franchises involved herein, and this fact will, no doubt, be conceded by the appellant City of Los Angeles and appellee Los Angeles Railway Corporation. This power of the Railroad Commission is delegated by the State under the California Constitution of 1879, as amended (Secs. 20 and 22 of Article XII, as amended October 10, 1911; Sec. 23 Article XII, as amended November 3, 1914, and the Public Utilities Act of California enacted 1911 (Stats. 1911, extra session, p. 18), reenacted in 1915 (Stats. 1915, p. 115).[2]

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(2) The relevant constitutional and statutory provisions provide as follows:

Section 20 of Article XII of the California Constitution provides:

> "No railroad or other transportation company shall raise any rate of charge for the transportation of freight or passengers or any charge connected therewith or incidental thereto, under any circumstances whatsoever, except upon a showing before the railroad commission provided for in this constitution, that such increase is justified, and the decision of the said commission upon the showing so made shall not be subject to review by any court except upon the question whether such decision of the commission will result in confiscation of property." (Amendment adopted October 10, 1911.)

Section 22 of Article XII of the California Constitution provides in part:

> "* * * Said commission shall have the power to establish rates of charges for the transportation of passengers and freight by railroads and other transportation companies, and

It has been directly held by this Court that the binding effect of such contracts *as between the par-*

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no railroad or other transportation company shall charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or freight, or for any service in connection therewith, between the points named in any tariff of rates, established by said commission, than the rates, fares and charges which are specified in such tariff. * * *" (Amendment adopted October 10, 1911.)

Section 23 of Article XII of the California Constitution provides in part:

"* * * The railroad commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for such commodities furnished, or services rendered by public utilities as shall be conferred upon it by the legislature, and the right of the legislature to confer powers upon the railroad commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this constitution. * * *." (Amendment adopted November 3, 1914.)

Section 13 of the Public Utilities Act is as follows:

"(a) All charges made, demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful.

"(b) Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable.

"(c) All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable." (Stats. 1915, p. 115.)

Section 27 of the Public Utilities Act provides as follows:

"No street or interurban railroad corporation shall charge, demand, collect or receive more than five cents for one continuous ride in the same general direction within the corporate limits of any city and county, or city or town, except upon a showing before the commission that such greater charge is justified; provided, that until the decision of the commission upon such showing a street or interurban railroad corporation may continue to demand, collect and receive the

ties was not impaired because, under State law or Constitution, the Legislature retained "unfettered power" at any moment to revise the contract rate.

Southern Utilities Co. v. Palatka, (1925) 268 U. S. 232;

Opelika v. Opelika Sewer Co., (1924) 265 U. S. 215;

Henderson Water Co. v. Corporation Commission of North Carolina, (1925) 269 U. S. 278.

In the *Palatka* case the contract was sought to be avoided on the ground that the rate had become non-compensatory and that since the Legislature might at any time intervene and change the contract rate the parties to the contract were no longer bound. This Court held that the power of the Legislature to change the rate did not prevent the *parties* from making a binding contract with respect thereto which would remain binding *as between them* until the rate *had been changed* by State authority. This Court said (page 233):

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fare lawfully in effect on November 3, 1914. Every street or interurban railroad corporation shall upon such terms as the commission shall find to be just and reasonable furnish to its passengers transfers entitling them to one continuous trip in the same general direction over and upon the portions of its lines within the same city and county, or city or town, not reached by the originating car." (Stats. 1915, p. 115.)

Section 63 of the Public Utilities Act provides in part as follows:

"(a) No public utility shall raise any rate, fare, toll, rental or charge or so alter any classification, contract, practice, rule or regulation as to result in an increase in any rate, fare, toll, rental or charge, under any circumstances whatsoever, except upon a showing before the commission and a finding by the commission that such increase is justified." (Stats. 1915, p. 115.)

"The Supreme Court held that the city had power to grant the franchise and to make the contract, and that it had no power, of its own motion, to withdraw, *but it concedes the unfettered power of the legislature to regulate the rates.* On that ground the defendant contends that there is a lack of mutuality, and therefore that it is free, and cannot be held to rates that, in the absence of contract, it would be unconstitutional to impose. The argument cannot prevail. Without considering whether an agreement by the company in consideration of the grant of the franchise might not bind the company in some cases, even if it left the city free, *it is perfectly plain that the fact that the contract might be overruled by a higher power does not destroy its binding effect between the parties when it is left undisturbed.* Georgia R. & Power Co. v. Decatur, 262 U. S. 432, 438, 67 L. ed. 1065, 1073, 43 Sup. Ct. Rep. 613; Opelika v. Opelika Sewer Co. 265 U. S. 215, 218, 68 L. ed. 985, 987, 44 Sup. Ct. Rep. 517. Such a notion, logically carried out, *would impart new and hitherto unsuspected results to the power to amend the Constitution or to exercise eminent domain.* There is nothing in this decision inconsistent with Southern Iowa Electric Co. v. Chariton, 255 U. S. 539, 65 L. ed. 764, 41 Sup. Ct. Rep. 400; San Antonio v. San Antonio Pub. Serv. Co. 255 U. S. 547, 65 L. ed. 777, 41 Sup. Ct. Rep. 428; and Ortega Co. v. Triay, 260 U. S. 103, 67 L. ed. 153, 43 Sup. Ct. Rep. 44." (Italics ours.)

In the *Opelika* case the Sewer Company had entered into a contract with the City of Opelika for a period of thirty years, authorizing the Company to charge not in excess of certain specified rates. The Constitution of the State of Alabama provided that no law

"making any irrevocable or exclusive grants of special privileges or immunities shall be passed

> by the Legislature; and every grant of a franchise, privilege or immunity, *shall forever remain subject to revocation, alteration or amendment.*"

Notwithstanding this provision an irrevocable contract for a term of thirty years had been made with the Sewer Company.

The District Court held that no valid contract existed and, accordingly, granted an injunction against the rate. The decree of the District Court was reversed by this Court where the question presented was thus stated:

> "It is to be taken that the present rates, which the plaintiff seeks to increase, are *confiscatory unless the city has a right to insist upon them;* and the question before us is whether the city has that right by contract, or whether its enforcement of them deprives the plaintiff of its property without due process of law, contrary to 14th Amendment of the Constitution of the United States, as alleged in the bill. Cincinnati v. Cincinnati & H. Traction Co., 245 U. S. 446, 62 L. ed. 389, 38 Sup. Ct. Rep. 153. The District court held that there was no valid contract, and issued an injunction as prayed. The city appealed to this court."

It was held that notwithstanding the provisions of the State Constitution referred to, the contract between the City and the Sewer Company, *although subject to revocation by the State*, was valid. The Court, with special reference to this provision of the State Constitution, said:

> "No doubt it is true also that the legislature could not make such a grant indirectly by giving power to a city to make. But we see no reason to doubt that the legislature, *without impairing*

> *its power to revoke,* may give a city power to make a contract *from which the city, of its own motion, may not recede. The city has not attempted to recede from it.*" (Italics ours.)

Again it was said, therefore, that although the Legislature expressly reserved "its *power* to revoke," that fact did not affect the validity of the contract *as between the parties and* that, accordingly, the parties *"of their own motion may not recede."* The paramount right of the Legislature, even in a case where it was conceded to exist, to "revoke" the contract did not affect the inviolability of the contract *as between the parties* until the State *had exercised* that right. It was a right pertaining to the *State* and not pertaining to the *parties.*

In *Henderson Water Company v. Railroad Commission of North Carolina,* supra, the appellant water company, assignee of a franchise from the city obligating it to furnish water at certain fixed rates, sought to increase said charges. Application had been made to the State Corporation Commission for authority to affect the desired increase and partial relief granted with the direction to the company to try the new rates for six months, after which time it might again apply for further relief if the same should be justified.

The company contended that the increase thus granted was not sufficient and brought suit in the District Court of the United States alleging the rate, even as thus increased, to be confiscatory. If the rate were *statutory,* and *confiscatory* under the Federal Constitution, the postponement of full relief for six

months would constitute the denial of a constitutional right, as was apparently conceded by the Court (citing *Oklahoma Natural Gas Co. v. Russell,* 1923, 261 U. S. 290). The plaintiff there contended precisely as the appellee will no doubt contend here, that since the State had established "a regulatory plan" over rates by establishing a Commission having full power over the subject of rates, the failure of the Commission to award relief presented a question arising under the Constitution of the United States. It contended, furthermore, that the delay of six months imposed by the action of the Commission justified a direct appeal to the Federal Courts.

The Court held that since the water company was bound by contract with the city, it was not in a position to assert that the failure of the Commission to grant adequate relief under the statute creating it *constituted any infringement of a constitutional right.* In other words, it was held that the right of the water company "bound by the terms of a contract with the city" to relief by the Corporation Commission "speaking for the state" was not a constitutional right and that, accordingly, the water company did not "have any standing to ask for a fixing of rates in excess of the franchise rights." The Court said (pp. 281-282):

> *"The present case differs from the cases cited (Oklahoma Natural Gas Co. v. Russell,* supra) *in that when the Water Company applied to the Corporation Commission for an order increasing rates, it was bound by the terms of a contract with the city contained in its franchise, to furnish water at a low schedule of rates fixed therein. It was not entitled to any judicial relief from*

> *this situation, however inadequate the rates.* Columbus Railway Company v. Columbus, 249 U. S. 399; Public Service Company v. St. Cloud, 265 U. S. 352. *Only by securing the waiver of the franchise rates by order of the Corporation Commission speaking for the State, did the Water Company have any standing to ask for a fixing of rates in excess of the franchise rates.* Trenton v. New Jersey, 262 U. S. 182. *It was, therefore, plainly within the power and discretion of the Commission after granting partial relief to delay further action in the same proceeding until it could satisfy itself by actual trial to what extent its waiver should go.*" (Italics ours.)

It should be noted that the statute under consideration in the *Henderson* case (Sec. 1066 of the Consolidated Statutes of North Carolina of 1919) provided:

> "COMMISSION TO FIX RATES FOR PUBLIC UTILITIES. Subject to the provisions as to passenger rates in the chapter of railroads and as to railroad freight rates in this chapter the Commission shall make reasonable and just rates and charges in intrastate traffic and regulate the same."

The Supreme Court of North Carolina had accordingly decided that the Corporation Commission had jurisdiction to increase, *as it had in fact in that case increased* (but not to the extent demanded) the rates established by the contract made before the enactment of the regulatory statute. (*Corporation Commission v. Henderson Water Co.,* 190 N. Carolina, 70.) By that decision, which was referred to by this Court in its opinion, the Supreme Court of North Carolina held that the Corporation Commission was

> "vested by law with power and authority to fix and establish any and all rates which it (the Water Company) may charge for services rendered by it. When the corporation commission is called upon by either the corporation or those to whom the services are rendered under its franchise to exercise this power and authority it is its duty to fix and establish just and reasonable rates to be charged for such services."

This Court held that since the water company was bound by the contract with the city, even though that contract was subject to jurisdiction of the Commission, it was not entitled to relief under the Constitution of the United States, but must secure relief from the Commission, if at all; the fact that partial waiver of the contract rate had been made was not enough to convert the contract rate into a statutory rate.

This precise question was considered in *City of Manitowoc v. Manitowoc & Northern Traction Co.,* (1911) 145 Wis. 13 (129 N. W. 925), cited and quoted with approval by this Court in *Milwaukee Electric Railway & Light Co. v. Railroad Commission,* (1915) 238 U. S. 174. There a contract had been executed between the municipality and the utility corporation limiting the rate of fare to ten cents. The Statute of Wisconsin, however, which was substantially the same as the Public Utilities Act of California created a Railroad Commission with powers which were also substantially identical with the *regulatory* powers of the California Commission. It was, therefore, contended by the utility corporation that its contract with the city for an unremunerative rate of fare had become invalid and that it was therefore entitled to charge a "reasonable" fare. The Court held that the contract remained

valid *as between the parties* until modified by the Commission and that *the enactment of the statute providing for reasonable rates and the creation of the Commission to apply that standard* did not invalidate the contract. The Court said:

> "No specific authority having been conferred on the city to enter into the contract in question, the right of the state to interfere whenever the public weal demanded was not abrogated. *The contract remained valid between the parties to it until such time as the state saw fit to exercise its paramount authority, and no longer.* To this extent and to this extent only is the contract before us a valid subsisting obligation."

Holding, however, that the statute did *not* invalidate or modify the contract until *action* had been taken by the Commission, the Court said:

> *"Whether the state has exercised its right to modify this rate remains to be considered.* Chapter 362, Laws 1905, applies to interurban railway companies. In re Application of Chapter 362, Laws 1905, to Certain Street Railways, 1 Wis. R. R. Com. Rep. 178. *By that statute (section 3) it is provided that all charges made by any carrier coming under its provisions 'shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.'* Railway Companies are required (section 4) to file their tariffs with the Railroad Commission, and are prohibited from making changes therein except on ten days' notice, and the rates fixed in such tariffs are declared to be the lawful rates until changed as provided by the Act. * * *
>
> *"It is contended that this law has superseded the contract involved in this suit and that therefore the contract no longer has any binding force or effect. We do not think so. The statute worked no change in existing rates. It simply*

provided that all rates should be reasonable, and left to the Railroad Commission the power to determine the fact as to whether or not a given rate was reasonable. When the determination was reached the law became operative upon the particular rate called in question, and the rate arrived at then became the lawful rate and continued so until set aside in the manner provided by the law. The Railroad Commission has made no determination in the case before us; at least, if it has it is no part of the record. Until that determination is made, the contract is in force. When it is made, the contract is superseded, if the rate is changed. * * *

"This is a question which calls for the exercise of legislative policy and discretion. *The Court cannot relieve the defendant from an improvident contract,* but the contract is of such a character in the present instance that the legislative branch of the government may, in the interest of the public, abrogate it. * * *

"The judgment of the circuit court is reversed, and the cause is remanded, with directions to enter judgment enjoining the defendant from changing the rates of fare between the cities of Manitowoc and Two Rivers provided for in the ordinance of November 24, 1902, *until such time as such rates are changed by the Legislature, or through a legislative agency in the manner provided by law.*"

To the same effect was the decision in *Monroe v. Detroit M. & T. Short Line R. Co.,* (1915), 187 Mich. 364, 153 N. W. 669, where there was a contract between the City and the utility corporation. It was contended for the Company that the State Utility Act operated as a revocation of any power the city might have had to contract concerning the service to be furnished by the Company. Referring to this contention the Court said:

> "The rule that contracts such as the one here involved *are made subject* to the necessities of police regulations is recognized by this Court."

Continuing, however, the Court said:

> "It does not follow that because the contract may yield to the exigency of public necessity, *when such exigency has been determined in a proper case and manner,* by competent authority, that the respondent, a party to the contract, may ignore the contract obligation, plead the public or its own convenience as an excuse *and remit the relator to a commission for relief.* On the contrary, it seems wholly reasonable that it should perform its contract obligations *until relieved therefrom by competent authority.*"

In *Salt Lake City et al v. Utah Light & Traction Co.,* (1918) 52 Utah 476 (173 Pac. 556), the traction company had obtained an increase in rates from the State Commission. The city objected to the increase on the ground that the rate was fixed by contract and could not be changed even by State authority. The Court held that the State Commission had power to change the rate but it was expressly conceded that *unless* changed by the Commission the rate was binding *as between the parties.* On this subject the Court said:

> "It is now settled law that *so long as the state does not interfere the rates agreed upon between the cities and the street railway companies in the franchise ordinance are binding and enforceable. Neither party, without the consent of the other, may disregard any rate that is agreed upon between them.*"

Similarly in *Traverse City v. Michigan Railroad Comm.* (1918), 202 Mich. 575, 168 N. W. 481, the Court said:

"This subject will be found to have been so exhaustively discussed in its various aspects and the applicable rule so plainly declared in the above cases and those cited in them that it is sufficient here to state we need not go to the extent of many of those decisions to determine in the instant case that Traverse City *was not given by its charter the power to regulate the rates* to be charged by telephone companies, that the franchise contract upon which it relies was not permissive, and, *though binding between the parties to it in the absence of governmental interposition,* is to be construed as having been entered into with reference to the *right* and *power* of the government to assert and exercise its inherent paramount authority."

The following authorities are to the same effect, holding contractual franchise rates to be binding between the parties until and when abrogated and changed by the state through the exercise of its police power:

State of Washington v. Pacific T. & T. Co. (1924), 1 Fed. (2nd) 327;

State ex rel Ellertsen v. Home Tel. & Tel. Co. (1918), 102 Wash. 196, 172 Pac. 899;

Sumpter G. & P. Co. v. City of Sumpter (1922), 283 Fed. 931;

Woodburn v. Public Service Comm. (1916), 161 Pac. 391, 82 Or. 114.

It is well settled in California that contracts fixing rates to be charged by public utilities shall be binding as between the parties until superseded by order of the Railroad Commission changing such contract rates. There are no cases involving franchise contract rates on street railroads.

In the case of *Southern Pacific Co. v. Spring Valley W. Co.* (1916), reported in 173 Cal. 291, the plaintiff sought to compel the defendant water company to continue to furnish it water under its contract and to enjoin the water company from disturbing any connections through which the water was conducted. In the course of the opinion, the Court said:

> "We perceive no valid reason for holding the contract void because opposed to public policy. It is not claimed that it was not freely made, or that it was procured by fraud or undue influence. There is nothing inherently wrong in such a contract to give water service upon payment in advance. No regulation or rule of any public authority empowered to control or regulate public water service in Alameda county had or has forbidden it. There is no claim that the taking of this water by the plaintiff has reduced the supply remaining in control of the defendants below the quantity necessary or convenient for the other consumers entitled to it or applying for it, or that the supply to plaintiffs has not been from a surplus that would have been unused but for their taking. *Where the rates for water devoted to public use have not been fixed by public authority, the person in charge of the use and the consumer may freely contract regarding the price of service and the manner of payment, and such contracts will be deemed valid by the courts and may be enforced by any appropriate mode.* (Fresno Canal etc. Co. v. Park, 129 Cal. 437 (62 Pac. 87); Stanislaus W. Co. v. Backman, 152 Cal. 725, 730 (15 L. R. A. (N. S.) 359, 93 Pac. 858); Leavitt v. Lassen Irr. Co., 157 Cal. 82, 90 (29 L. R. A. (N. S.) 213, 106 Pac. 404).)
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> * * * * * * *
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> "Any contract purporting to give such preference in the public use, or to transfer a part of the dedicated public supply to private use, is subject to revision by competent public authority, to the end that the public service shall not be un-

justly discriminatory, or unreasonable, and that the private use shall not interfere with the public use, *and such contracts may, by such authority, be reformed accordingly, to make them conform to the public interest.* (Turtle Creek Borough v. Pennsylvania W. Co., 243 Pa. 408 (90 Atl. 194); Bellevue Borough v. Ohio V. W. Co., 245 Pa. 117 (91 Atl. 236); see, also, Fresno etc. Co. v. Park, 129 Cal. 437 (62 Pac. 87); Stanislaus W. Co. v. Backman, 152 Cal. 725 (15 L. R. A. (N. S.) 359, 93 Pac. 858).) In the case first cited it is said *that the power to fix rates and regulate public service of water devoted to public use 'carries with it jurisdiction to determine the reasonableness of charges, irrespective of prior contracts, to that extent such contracts may be reformed.' But until such public authority has intervened and modified such prior contract, it will be recognized as valid, and enforced in the courts, as declared in our decisions above cited.* The power to revise and reform contracts of public service water companies, in the interest of the public, applies as well to a contract creating or attempting to create an easement in the water held for public use as to any other disposition thereof." (Italics ours.)

In the case of *Henrici v. South Feather Land etc. Co.* (1918), reported in 177 Cal. 442, the Court had before it a suit for damages for violation of a contract to supply water for irrigating lands. The defendant company had purchased the water company and claimed it was not bound by the terms of a contract with the plaintiff. After purchasing the property defendant had put in a rate in excess of that specified in the contract which plaintiff had made with the defendant's predecessor. Plaintiff refused to pay the increased rate and the company refused to deliver water. The pertinent part of the decision is as follows:

> "The obligation to furnish water at the agreed rate was unlimited in time, *and continued until the rate was superseded by order of a public body vested with the power of regulating the service.*" (Italics ours.)

In conclusion we find that it is the unanimous holding of this Honorable Court and nurmerous other Courts, including the California Supreme Court that rates for public utility service agreed upon and fixed by contract are binding between the parties to the contract until the said rates are abrogated and changed by the state in the exercise of its police power. Until the contract rate is increased or decreased by the state it remains in full force and effect.

V. THE COURT ERRED IN HOLDING THAT THE RAILROAD COMMISSION BY ITS ORDERS OF 1921 AND 1928 ABROGATED THE RATES FIXED IN THE VARIOUS FRANCHISE CONTRACTS IN QUESTION.

A. The Commission order of 1921.

The District Court in its decision did not hold that the City of Los Angeles was without power to contract as to the rates of fare to be charged by respondent company, but to the contrary for the purpose of its decision assumed that the city possessed such power and that the franchises granted to respondent did constitute valid contracts. The Court held, however, that the permissive order of the Railroad Commission of 1921 authorizing respondent to increase its rates upon certain conditions constituted a *change* of existing contract rates and abrogated said rates agreed upon by the parties. The opinion of the Court states in part:

"We prefer to rest our decision upon the ground that even upon the assumption that the city had power to fix the utility rate by contract and that the rate provisions contained in the franchises granted to plaintiff did constitute contracts, nevertheless, the rates specified in the provisions of the franchises *have been changed by the exercise of the police power of the state.* It appears that in 1921 the Commission granted plaintiff company authority to increase its rates over the basic five cent fare which was then in force. There were in force and effect at that time 102 out of 116 franchises granted to plaintiff or its predecessors. Since May, 1921, fourteen other franchises have been granted. When the Commission in 1921 *made its order changing the basic five cent fare,* it authorized plaintiff to file with the Commission and put into effect thirty days from the date of the order, a schedule of rates increasing the then-present basic fare of five cents to six cents, and directed that tickets or tokens be put on sale. That plaintiff company did not avail itself of the right to the increase does not affect the fact that the Commission exercised its exclusive jurisdiction to regulate rates by making and finding that the rates provided for in the franchise granted to plaintiff were inadequate, and that the six cents fare authorized was a just rate. The Commission in its decision said:

" 'If adequate street railway service is to be given in Los Angeles, there appears to be no possibility for the company to secure the necessary revenue under a continuation of the flat 5-cent fare. An increase in the fare in some form, we are satisfied, should be authorized if street railway service is not to suffer and great injury is not to result to the development of the city.'

"The order authorized the company to put into effect within thirty (30) days from the date of the order a schedule of rates increasing the basic 5-cent fare to 6 cents, provided that tickets or

> tokens be put on sale at the company's offices, on the company's cars, and at such points as the company may select, in blocks of ten (10) tickets or tokens at a total cost of 50 cents for each block; and provided further that the single 6-cent fare, as also the reduced rate ticket or token fare, shall retain transfer privileges as then in existence."

The error in the conclusion of the Court is patent. The record herein shows conclusively that the Commission never "made its order changing the basic five cent fare" in 1921 or at any other time. It merely issued a permissive order which was never accepted by respondent, and which never became effective. (19 Cal. Railroad Commission Opinions and Orders 980.) The complete story of said Commission order of 1921 is found in the Affidavit of H. G. Mathewson, Secretary of the Railroad Commission (R. 347-350) and reveals that the authority granted respondent was not only not accepted, but on June 20, 1921, within the period allowed by law, a petition for rehearing on said decision was filed by respondent in which the lawfulness of the order was challenged. The petition for rehearing was set down for argument before the Commission, and removed from the calendar at the specific request of respondent company. On October 13, 1926, respondent company addressed the following letter to the Commission (R. 349):

> "In re Application No. 4238
>
> Gentlemen: The above application was dropped from the Commission's calendar, upon our request on March 14, 1922, and no further action has been taken in the matter since that date.

In view of the entire change of conditions since 1918, when Application No. 4238 was filed by this company, *we at this time request that your Honorable Commission dismiss Application No. 4238 and the matters supplemental thereto.*

Very respectfully, Los Angeles Railway Corporation by (Signed) G. J. Kuhrts, Vice President and Gen. Manager. Gibson, Dunn & Crutcher, by (Signed) S. M. Haskins, Its Attorneys."

(Italics ours)

Thereafter, on October 25, 1926, the Railroad Commission issued its Decision 17,526, providing as follows (R. 349):

"ORDER SETTING ASIDE DECISION AND DISMISSING APPLICATION

By the Commission:

Request having been made by applicant in the above entitled matter for dismissal of this application, and

Good cause appearing for the granting of said request,

It is hereby ordered that the *above entitled application being Application No. 4238, be and the same is hereby dismissed, and*

It is hereby further ordered that Commission Decision No. 9029 heretofore rendered in the above entitled matter, which decision has been suspended by virtue of the pendency of a petition for rehearing, be and the same is hereby set aside and revoked.

Dated at San Francisco, California, this 25th day of October, 1926.

H. W. Brundige, C. L. Seavey, Ezra W. Decoto, Leon O. Whitsell, Commissioners.

(Italics ours)

Hence we find that the Railroad Commission decision of 1921, which was emphasized by the Court in its opinion, was revoked and irradicated at the instance and request of applicant company. The language of the order of revocation is significant, it showing that the decision had been suspended by virtue of the pendency of petition for rehearing. We must conclude therefore that the order at all times *was fully as ineffective* as if it had never been issued, and in no manner abrogated or affected the existing franchise rates.

In considering the effect of the proceedings had before the California Railroad Commission in the application of appellee for rate increase, Application 4238, it is proper to ask this question: *What was the order of the Commission in that proceeding?* The order (Decision 17,526, supra), was one of dismissal, dismissing the entire proceeding, issued at the instance and request of applicant. True, a prior order (Decision 9029) had been issued in the proceeding which was intermediate and permissive in character, but which had never become effective. *The final order* and the one which necessarily must be controlling, was one of dismissal, effectively revoking the intermediate, ineffective and permissive order, and dismissing the entire proceeding.

It was found by the Court, and will be conceded by appellee, that the permissive order of 1921 (Decision 9029) was not accepted by the appellee. No tariffs were ever filed with the Railroad Commission by appellee pursuant to said intermediate order. The Pub-

lic Utilities Act expressly requires that new tariffs be filed with the Commission before existing rates may be changed.[3] It is well established under the authorities that rates may be changed only by strict compliance with the applicable statutory procedure. *Wichita Railroad & L. Co. v. Public Utilities Com. of Kansas, et al.*, (1922), 260 U. S. 48; *Traverse City v. Citizens Tel. Co.* (1917), 195 Mich. 374, 388; 161 N. W. 983, 988.

It should also be pointed out that the order of 1921 has never been treated by appellee as anything but a nullity. This is forcefully acknowledged in the bill of complaint herein, the plaintiff's first cause of action being predicated entirely upon the existence of franchise rates, and its second cause of action being predicated entirely upon the refusal of the Railroad Commission to change the franchise rates.

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(3) Section 15. Unless the commission otherwise orders, no change shall be made by any public utility in any rate, fare, toll, rental, charge or classification, or in auy rule, regulation or contract relating to or affecting any rate, fare, toll, rental, charge, classification or service, or in any privilege or facility, except after thirty days' notice to the commission and to the public as herein provided. Such notice shall be given by filing with the commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes will go into effect. The commission for good cause shown, may allow changes without requiring the thirty days' notice herein provided for, by an order specifying the changes so to be made and the time when they shall take effect, and the manner in which they shall be filed and published. When any change is proposed in any rate, fare, toll, rental, charge or classification, or in any form of contract or agreeemnt or in any rule, regulation or contract relating to or affecting any rate, fare, toll, rental, charge, classification or service, or in any privilege or facility, attention shall be directed to such change on the schedule filed with the commission, by some character to be designated by the commission, immediately preceding or following the item. (California Stats. 1915, p. 115.)

The final and conclusive reason why the order of 1921 was ineffective for all purposes, lies in the fact that it was expressly made so under the provisions of Section 66 of the Public Utilities Act.[4] The record

(4) Sec. 66. "After any order or decision has been made by the commission, any party to the action or proceeding, or any stockholder or bondholder, or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in said action or proceeding and specified in the application for rehearing, and the commission may grant and hold such rehearing on said matters, if in its judgment sufficient reason therefor be made to appear. No cause of action arising out of any order or decision of the commission shall accrue in any court to any corporation or person unless such corporation or person shall have made, before the effective date of said order or decision, application to the commission for a rehearing. Such application shall set forth specifically the ground or grounds on which the applicant considers said decision or order to be unlawful. No corporation or person shall in any court urge or rely on any ground not so set forth in said application. Any application for a rehearing made ten days or more before the effective date of the order as to which a rehearing is sought, shall be either granted or denied before such effective date, or the order shall stand suspended until such application is granted or denied. Any application for a rehearing made within less that ten days before the effective date of the order as to which a rehearing is sought, and not granted within twenty days, may be taken by the party making the application to be denied, unless the effective date of the order is extended for the period of dependency of the application. If any application for a rehearing be granted without a suspension of the order involved, the commission shall forthwith proceed to hear the matter with all despatch and shall determine the same within twenty days after final submission, and if such determination is not made within said time, it may be taken by any party to the rehearing that the order involved is affirmed. An application for rehearing shall not excuse any corporation or person from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission may by order direct. If, after such rehearing and a consideration of all the facts, including those arising since the making of the order or decision, the commission shall be of the opinion that the original order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change or modify the

shows that the 1921 order was dated May 31, 1921, and authorized the filing of proposed rules, regulations and rates, thirty days from the date of said order, and further the record shows that the appellee company filed its petition for rehearing with the Railroad Commission ten days before the said effective date, to-wit: on June 20, 1921 (R. 348). Under the terms of Section 66 of the Public Utilities Act, supra, it is provided in part at "any application for a rehearing made ten days or more before the effective date of the order as to which a rehearing is sought, shall be either granted or denied before such effective date, or the order shall stand suspended until such application is granted or denied." The petition for rehearing not having been granted or denied before the effective date provided in said order, it follows that the order was suspended and never became effective.

In ruling that the Railroad Commission order of 1921 abrogated the rates fixed by the various franchises in question the Court relied on the decision of this Honorable Court in *Denney v. Pacific T. & T. Co.* (1928) 276 U. S. 97, 100. In that case the Court had before it appeals by defendants from decrees of the United States District Court for the Western District of Washington enjoining the enforcement of rates for telephone service alleged to be confiscatory.

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same. An order or decision made after such rehearing abrogating, changing or modifying the original order or decision shall have the same force and effect as an original order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the commission." (California Stats. 1915, p. 115.)

On appeal defendants contended that the United States District Court was without jurisdiction to give the injunctive relief granted inasmuch as the plaintiff telephone companies were operating under certain contractual franchises in which maximum permissive rates were fixed. The Court properly rejected this contention and held that the decree of the lower Court was sound, *it appearing that the Department of Public Works of the State of Washington, pursuant to statutory authority had issued its order in 1923 abrogating the franchise rates and approving as just and reasonable rates theretofore fixed by the Postmaster General in Federal control in 1919, which rates were of a higher level than those provided in the contracts.* The opinion states in part (p. 300):

> "The order of March 31, 1923, in effect declared the rates then being observed just and sufficient to yield reasonable compensation. It expressly commanded their future observance and was sufficient to terminate the provisions of the franchises as to maximum rates within the purview of Section 55, supra."

It is evident that the ruling of this Honorable Court in the *Denney* case, supra, is of no significance in the instant case inasmuch as the facts now before the Court show that the California Railroad Commission order of 1921 did not abrogate or terminate or affect in any manner whatsoever the rates established in the contractual franchises.

We again refer to the holdings of this Honorable Court in *Southern Utilities v. City of Palatka,* supra, and in *Henderson Water Co. v. Corporation Commission of the State of North Carolina,* supra. In

each of these decisions it was clearly pointed out that rates of fare fixed in contractual franchises should continue in effect and be inviolable as between the parties until and when said rates are changed and abrogated by the State in the exercise of its superior power. In *Southern Utilities v. City of Palatka,* this Court said (p. 233):

> "The supreme court held that the city had power to grant the franchise and to make the contract, and that it had no power, of its own motion, to withdraw, but it concedes the unfettered power of the legislature to regulate the rates. On that ground the defendant contends that there is a lack of mutuality, and therefore that it is free, and cannot be held to rates that, in the absence of contract, it would be unconstitutional to impose. The argument cannot prevail. Without considering whether an agreement by the company in consideration of the grant of the franchise might not bind the company in some cases, even if it left the city free, it is perfectly plain that the fact that the contract might be overruled by a higher power does not destroy its binding effect between the parties *when it is left undisturbed.*" (Italics ours.)

In *Henderson Water Co. v. Corporation Commission of the State of North Carolina,* supra, this Court in considering the nature and extent of said action required to abrogate contract made rates said:

> "* * * when the Water Company applied to the Corporation Commission for an order increasing rates, it was bound by the terms of a contract with the city contained in its franchise, to furnish water at a low schedule of rates fixed therein. It was not entitled to any judicial relief from this situation, however inadequate the rates. Columbus R. Power & Light Co. v. Columbus, 249 U. S. 399; 63 L. ed. 669, 6 A. L. R. 1648, P. U. R.

1919D, 239, 39 Sup. Ct. Rep. 349; St. Cloud Pub. Serv. Co. v. St. Cloud, 265 U. S. 352, 68 L. ed. 1050, 44 Sup. Ct. Rep. 492. *Only by securing the waiver of the franchise rates by order of the corporation commission speaking for the state, did the Water Company have any standing to ask for a fixing of rates in excess of the franchise rates.*" (Italics ours.)

The *Henderson* case was a strong case indeed, compared with the instant case. In that case a *partial* waiver of the contract rate had been granted by the Corporation Commission; yet this Court, in sustaining the ruling of the Federal District Court, held that such partial change was insufficient to abrogate the franchise contract rate, and that nothing short of a final waiver of said contract rate would suffice to give the Federal Court jurisdiction to relieve against confiscation.

The Railroad Commission order of 1921 having "left undisturbed" the contractual franchise rates, we respectfully submit that the District Court was in error in holding that the said rates were *changed* by the state in the exercise of its police power so as to give the District Court jurisdiction to grant the injunctive relief allowed.

B. The Commission order of 1928.

The District Court further held that the Railroad Commission order of 1928 (R. 165) denying application of appellee for a rate increase resulted in the abrogation of the franchise contract rates. The Court stated in part (R. 543):

"Furthermore, we are of opinion that the proceeding before the Railroad Commission (No.

13323) out of which the present suit grew, must be held to have been a complete exercise by the Commission of its power over the rate specified in the franchises granted to plaintiff. How could it be otherwise? The Commission received and considered original and supplemental applications for an increase made by plaintiff. It carried on an extensive investigation lasting from November, 1926, until March, 1928, when it made its finding that the five cent fare allowed to plaintiff was not an unreasonable return, and that under that rate and the method of operation for the year ending December 31, 1927, the return was approximately 4.9 per cent. The finding of the Commission rested upon detailed figures concerning the valuation of plaintiff's property. The practical result of the conclusion and order of the Commission was to prevent the company from obtaining a fair return upon its property invested in the public service. Its order was none the less effective in denying permission to raise an existing rate inasmuch as the necessary effect was to enforce the existing rate, which would effect confiscation of plaintiff's property (Miss. R. R. v. M. & O. R. R., 244 U. S. 388)."

We respectfully submit that the fact that the Railroad Commission of California exercised its statutory and constitutional authority in considering whether the franchise rates should be abrogated and increased and thereafter issued its order denying an increase is not material to a determination of the jurisdictional question now presented. Under the holdings of this Court in *Southern Utilities v. City of Palatka,* supra, *Henderson Water Co. v. Corporation Commission of the State of North Carolina,* supra, and *Denney v. Pacific T. & T. Co.,* supra, the contractual franchise rates are binding upon the parties, and the Federal Court is without jurisdiction in the premises

unless and until the contract rates are *abrogated* or *terminated* through the direction of increased or reduced rates.

The franchise contract rates in question could be abrogated only by a *"showing before the Railroad Commission and a finding by the Commission that the increase is justified."* (Secs. 27 and 63 of the Public Utilities Act, supra.) The Railroad Commission under its opinion and order on application of appellee for a rate increase (R. 165) found that there was no showing justifying the proposed increase and refused to make its finding authorizing said proposed increased rate. This Honorable Court in *Wichita Railroad & L. Co. v. Public Utilities Com. of Kansas, et al.* (1922), 260 U. S. 48, expressly held that the order of a state regulatory body purporting to increase contract rates will not abrogate an existing contract for public utility service unless the Commission order complies in every particular with the requirement of the state statute governing such orders. In that case two utilities operating in Kansas had contracted for the sale and purchase of power at certain rates. The Public Utility Commission of Kansas, on complaint of one of the utilities, issued its order granting an increase in the contract rate. The utility resisting the increase instituted proceedings in the United States District Court and enjoined the Commission from putting in force the increased rate authorized. On appeal the Circuit Court reversed the decree. On appeal to this Honorable Court the ruling of the District Court was upheld. The order of the Commission was held to be void,

there being no express finding therein that the existing rates were unreasonable or unjust, as required by the state statute. Section 13 of the Public Utility law of Kansas provided:

> "It shall be the duty of the Commission, either upon complaint or upon its own initiative to investigate all rates, fares, * * * and if after full hearing and investigation the Commission shall find that such rates * * * are unjust, unreasonable, unjustly discriminatory or unduly preferential, the Commission shall have power to fix and order substituted therefor such rate or rates * * * as shall be just and reasonable."

This Court stated in its decision:

> "The proceeding we are considering is governed by Sec. 13. That is the general section of the act comprehensively describing the duty of the Commission, vesting it with power to fix and order substituted new rates for existing rates. The power is expressly made to depend on the condition that, after full hearing and investigation, the Commission shall find existing rates to be unjust, unreasonable, unjustly discriminatory, or unduly preferential. We conclude that a valid order of the Commission under the act must contain a finding of fact after hearing and investigation, upon which the order is founded, and that, for lack of such a finding, the order in this case was void."
>
> * * * * * * *
>
> "In creating such an administrative agency, the legislature, to prevent its being a pure delegation of legislative power, must enjoin upon it a certain course of procedure and certain rules of decision in the performance of its function. * * * When, therefore such an administrative agency is required, as a condition precedent to an order, to make a finding of facts, the validity of the order must rest upon the needed finding. If it is lacking, the order is ineffective."

In ruling that the contract rate had not been lawfully changed the Court approved the ruling of the Supreme Court of Kansas in *Kaul v. American Independent Teleph. Co.* (1915), 95 Kan. 1, 147 Pac. 1130; and quoted the following portion of the decision in that case:

> "While that Commission is vested with broad regulatory powers, it is not shown nor claimed that it has found the contract rates to be unreasonable. Granting, without deciding, that the Commission has the power, under the law, to determine whether or not the rates prescribed by the contract are reasonable and valid, and to revise them if found to be unreasonable, it does not appear that it has exercised the power, nor that they have been presented to it for its consideration. The passage of the act did not automatically overthrow contracts nor set aside schedules of rates which had been agreed upon. Neither did the fact that the defendant published and filed a schedule of rates with the Public Utilities Commission abrogate the contract. *In any event, rates previously agreed upon between utilities and patrons will continue in force until the Commission has found them to be unreasonable, and has prescribed other rates.*" (Italics ours.)

In conclusion we find that in the instant case the franchise contract rates were never effectively abrogated by the California Railroad Commission, there being no showing before the Commission or "finding by the Commission that such increase is justified." Under the many authorities above cited there can be no question of confiscation so long as the contract rates are not abrogated. It is only when contract rates have been changed by the State and they thus become statutory rates that the question of confisca-

tion can arise. The contract rates having never been abrogated, the District Court of Appeal was without power or authority to relieve against alleged confiscation.

If appellee was entitled to a change of its franchise contract rates it was solely because of the statutory right given to it by the State under Sections 13, 27 and 63 of the Public Utilities Act above quoted, and not because of the 14th amendment to the Federal Constitution. Appellee believing the order of the Railroad Commission denying a rate increase to have deprived it of its statutory rights granted under the above cited provisions of the Public Utilities Act of California could, and should have proceeded in the highest Court of the State, the California Supreme Court, and there sought to compel the Railroad Commission to exercise its police power to abrogate the contract rates. Under Section 67 of the Public Utilities Act appellee could have proceeded before the California Supreme Court on a petition for writ of review (certiorari) and there obtained a ruling as to the lawfulness of the order in question.[5] That Court could have determined

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(5) Section 67 of the Public Utilities Act of California provides:

"Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the rendition of the decision on rehearing, the applicant may apply to the supreme court of this state for a writ of certiorari or review (hereinafter referred to as a writ of review) for the purpose of having the lawfulness of the original order or decision or the order or decision on rehearing inquired into and determined. Such writ shall be made returnable not later than thirty days after the date of the issuance thereof, and shall direct the commission to certify its record in the case to the court. On the return

whether the Commission had regularly pursued its authority, and could have effectively protected the statutory rights enjoyed by appellee. It should also be noted that under the provisions of Section 67 of the Public Utilities Act a writ of mandamus will lie from the Supreme Court to the California Railroad Commission in all proper cases.

CONCLUSION.

In conclusion we respectfully submit that we have shown that the numerous franchise agreements

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day, the cause shall be heard by the supreme court, unless for a good reason shown the same be continued. No new or additional evidence may be introduced in the supreme court, but the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of the State of California. The findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review; such questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination. The commission and each party to the action or proceeding before the commission shall have the right to appear in the review proceeding. Upon the hearing the supreme court shall enter judgment either affirming or setting aside the order or decision of the commission. The provisions of the Code of Civil Procedure of this state relating to writs of review shall, so far as applicable and not in conflict with the provisions of this act, apply to proceedings instituted in the supreme court under the provisions of this section. No court of this state (except the supreme court to the extent herein specified) shall have jurisdiction to review, reverse, correct or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties; provided, that the writ of mandamus shall lie from the supreme court to the commission in all proper cases." (Stats. 1915, p. 115.)

granted by the City of Los Angeles to appellee under which appellee's street car operations are being conducted, constitute binding contracts between the parties; that the rate of fare provisions included in said franchises were inserted pursuant to specific statutory authority granted by the State of California to the City of Los Angeles; and that neither the contractual franchises nor the maximum rate of fare provisions which they contain have ever been changed or modified by the California Railroad Commission or by any other instrumentality of the State.

We further submit that under the unanimous holdings of this Honorable Court and numerous other Courts, above cited, the contract franchise rates of fare agreed upon are binding between the parties until changed and abrogated by the State in the exercise of the police power of the State. If the appellee Los Angeles Railway Corporation is entitled to a change in the existing contract rates of fare it is by virtue of the statutory rights granted under Sections 13, 27 and 63 of the Public Utilities Act and not because of any federal constitutional rights. Until and when the State of California, through the California Railroad Commission, does abrogate said contract rate of fare provisions, the Federal Courts are without power or authority to relieve appellee against any alleged confiscation—there being no confiscation where there is a binding contract.

We further submit that it has been shown that the District Court erred in holding that the Railroad Commission by its orders of 1921 and 1928 abrogated the franchise contract rates of fare provisions, and

that the Court therefore erred in issuing its injunctive decree against appellant. It is respectfully submitted that the decree should be reversed.

Dated, San Francisco,
September 7, 1929.

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1929.

No. 60.

The Railroad Commission of the State of California, and The City of Los Angeles,
Appellants,
vs.
Los Angeles Railway Corporation (a corporation),
Appellee.

BRIEF OF APPELLEE, LOS ANGELES RAILWAY CORPORATION.

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October 3, 1929.

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SUBJECT INDEX.

PAGE

Statement 3
Argument 6
Franchises 7
I. The City Has Never Possessed the Power to Fix Public Utility Rates by Contract 8
(a) In California Municipal Police Powers Are Zealously Guarded From Impairment by Contract 9
(b) A Grant of Authority to Contract Away the Police Power Must Be Unequivocal 10
(c) There Is No Grant of Authority to the City to Fix Public Utility Rates by Contract 13
Civil Code 13
Franchise Acts 15
City Charters 22
Section 23, Article XII, Constitution 30
Section 27, Public Utilities Act 33
II. Under the State Constitution the Legislature Cannot Fix Public Utility Rates by Contract nor Delegate Power to the City to Do So 34
III. In California the Grant of a Franchise Is a Legislative Function and Where, as Here, No Grant of Authority to Fix Rates by Contract Exists, Franchise Fare Provisions Cannot Operate by Way of Condition or Estoppel 41
IV. The Fare Provisions of These Franchises Evince an Intention to Regulate, Not to Contract 51
V. The Commission Has Twice Exercised Jurisdiction Over the Company's Franchise Fare 56
(a) Decision No. 9029 (1921) 59
(b) Decision No. 19521 (1928) 63
VI. Confiscation 70
Rail Lines 71
Bus Lines 73
Combined Rail and Bus Lines 74
Economies in Operation 86
One-Man Cars 87
Inner-Neutral Zone 89
Past and Future Returns 91
Reasonableness of Proposed Fare 95
Conclusion 107

TABLE OF CASES.

PAGE

Ames v. Lake Superior Ry. Co. (Minn.), 21 Minn. 241 40

Augusta-Aiken Ry. & Elect. Corp. v. Railroad Commission (1922, C. C. 4th), 281 Fed. 977 ..... 66, 67

Bessemer v. Bessemer City Water Works, 152 Ala. 391 40

Board of Public Utility Commrs. v. New York Telephone Co. (1926), 271 U. S. 23 ..... 92, 93, 95

California Railroad Commission Decisions, Vol. 19 (C. R. C.), 980 60

City of Arcata v. Green (1909), 156 Cal. 759 ..... 42, 43, 44

City of Denver v. Stenger (1922, C. C. 8th), 277 Fed. 865, 39, 49, 54

City of Los Angeles v. Central Trust Co. (1916), 173 Cal. 323 ..... 21, 89

City of New Orleans v. O'Keefe (1922, C. C. 5th), 280 Fed. 92 ..... 40, 49

City of Opelika v. Opelika Sewer Co. (1924), 265 U. S. 215 40

City of San Diego v. Kerckhoff (1920), 49 Cal. App. 473, 19, 21, 22

City of Zanesville v. Zanesville Gas Light Co. (Ohio, 1899), 23 N. E. 55 40

Civic Center Assn. v. Railroad Commission (1917), 175 Cal. 441 89

Cleveland v. Cleveland City Ry. Co. (1903), 194 U. S. 517 40

Columbus Ry. v. Columbus (1919), 249 U. S. 399 40

De Baker v. Railway Co. (1895), 106 Cal. 257 28

Denninger v. Recorder's Court (1904), 145 Cal. 629 ..... 28, 29

Denny v. Pac. Tel. & Tel. Co. (1927), 276 U. S. 97, 102 ..... 59, 62

Detroit v. Detroit Citizens Street Ry. Co. (1902), 184 U. S. 368 ..... 37, 40

Ex parte Campbell (1887), 74 Cal. 20 28

Ex parte Lorenzen (1900), 128 Cal. 431 29

Ex parte McClain (1901), 134 Cal. 110 28

Freeport Water Co. v. Freeport (1901), 180 U. S. 597 ..... 26, 27

Fritz v. San Francisco (1901), 132 Cal. 373 21

Gilchrist v. Interborough Rapid Transit Co. (1929), 73 L. Ed. 348, 355 108

PAGE

Home Tel. & Tel. Co. v. Los Angeles (1908), 211 U. S. 265, 8, 9, 11, 12, 13, 16

In re Blois (1918), 179 Cal. 291 ..... 35, 36

In re Isch (1917), 174 Cal. 180 28

In re Pfahler (1906), 150 Cal. 71 28

In re Montgomery (1912), 163 Cal. 457 28

In re Smith (1904), 143 Cal. 368 28

Interstate Commerce Comm. v. Louis. & Nash. R. R. Co. (1913), 227 U. S. 88, 91 68

Knoxville Water Co. v. Knoxville (1903), 189 U. S. 434 54

Laurel Hill Cemetery v. San Francisco (1907), 150 Cal. 464 ..... 9, 10

Loop Lumber Co. v. Van Loben Sels (1916), 173 Cal. 228, 19, 20, 21

Matter of the Application of Hines (1917), 33 Cal. App. 45, 47 36

McCardle v. Indianapolis Water Co. (1926), 272 U. S. 400 95

McNeil v. City of South Pasadena (1913), 166 Cal. 153 10

Milwaukee Elec. Ry. etc. Co. v. Railroad Commission (1915), 238 U. S. 174 12

Minneapolis v. Minneapolis St. Ry. Co. (1909), 215 U. S. 417 40

Mississippi R. R. Commission v. Mobile & Ohio R. R. Co. (1917), 244 U. S. 388 ..... 65, 66, 70

Newton v. Consolidated Gas Co. (1922), 258 U. S. 165 92

Northern Pac. Ry. Co. v. Dept. Public Wks. (1925), 268 U. S. 39 ..... 66, 70

Oddfellows Cemetery Assn. v. San Francisco (1903), 140 Cal. 226 28

Ohio Utilities Co. v. Public Utilities Commission (1925), 267 U. S. 359 86

O'Keefe v. City of New Orleans (D. C. 1921), 273 Fed. 560 39

Oro Electric Corp. v. Railroad Commission (1915), 169 Cal. 466 ..... 11, 16, 17

Pacific Tel. & Tel. Co. v. Eshleman (1913), 166 Cal. 640 ..... 69, 70

Paducah v. Paducah Ry. Co. (1923), 261 U. S. 267 12

People v. Dean (1898), 122 Cal. 421, 423 47

Pingree v. Mich. Central Ry. Co. (Mich.), 76 N. W. 635 40

Railroad Commission Cases (1885), 116 U. S. 307 12

PAGE

Re Los Angeles Ry. Corp., P. U. R. 1922A 66.....60, 62
Reed v. Anoka (1902), 85 Minn. 294, 297, 298, 88 N. W. 981.... 41
Rogers Park Water Co. v. Fergus (1901), 180 U. S. 624.....53, 54
San Antonio v. San Antonio Public Service Co. (1920), 255 U. S. 545.....6, 38, 48, 49
San Francisco-Oakland etc. Rys. v. City of Alameda (D. C. 1914), 226 Fed. 889.....12, 13, 14, 15
San Francisco-Oakland etc. Rys. Co. v. County of Alameda (1924), 66 Cal. App. 77..... 47
San Francisco v. Spring Valley Water Works (1874), 48 Cal. 493 .....44, 45
Smith v. Illinois Bell Tel. Co. (1926), 270 U. S. 587.....66, 70
South Pasadena v. Los Angeles etc. Railway Co. (1905), 109 Cal. 315 42
Southern Utilities Co. v. City of Palatka (1924), 86 Fla. 583, 99 S. 236, 241..... 41
Southern Utilities Co. v. City of Palatka (1925), 268 U. S. 232, 233 41
St. Cloud Pub. Serv. Co. v. St. Cloud (1924), 265 U. S. 352.... 41
St. Helena v. San Francisco etc. Ry. (1914), 24 Cal. App. 71.... 8
Stanislaus County v. San Joaquin etc. Canal Co. (1904), 192 U. S. 201..... 55
Thompson v. Board of Supervisors (1896), 111 Cal. 553..... 50
Town of St. Helena v. Ewer (1914), 26 Cal. App. 191....45, 46, 47

STATUTES.

PAGE

Charter of Los Angeles:
Charter of 1889 (Stats. 1889, p. 455)..... 23
Amendments of 1905 (Stats. 1905, p. 994).....24, 25, 27
Amendments of 1909 (Stats. 1909, p. 1292)..... 24
Amendments of 1911 (Stats. 1911, pp. 2051, 2065)..... 24
Amendments of 1913 (Stats. 1913, pp. 1629, 1633)..... 25
Civil Code of California:
Sec. 497 .....13, 15
Sec. 501 .....14, 15
Sec. 503 15

PAGE

Constitution of California:
Article I, Section 21 ..... 35, 52
Article I, Section 23 35
Article XI, Section 6 18
Article XI, Section 8 ..... 18, 36
Article XI, Section 11 ..... 27, 29, 52
Article XI, Section 19 45
Article XII, Section 23 ..... 30, 52, 89

Constitution of Colorado:
Article II, Section 11 38
Article XV, Section 8 39

Constitution of Louisiana:
Article 263 39

Constitution of Texas:
Article I, Section 17 37

Public Utilities Act of California:
Section 27 ..... 33, 62
Section 32 ..... [illegible]4
Section 63a 62
Section 67 ..... 68, 69

Statutes of California:
1889, p. 455 19
1889, p. 464 29
1893, p. 288 15
1897, p. 42 14
1901, p. 94 14
1905, p. 777 15
1905, p. 994 ..... 23, 24
1911, p. 476 14
1911, p. 2051 24
1913, p. 1629 22
1915, p. 115 ..... 32, 34, 62, 69
1915, p. 1301 17
1921, p. 1654 14
1921, pp. 115, 161 69

Department of Commerce Statistical Abstract of U. S., 1928, p. 44 14

IN THE

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OCTOBER TERM, 1929.

No. 60.

The Railroad Commission of the State of California, and The City of Los Angeles,

Appellants,

vs.

Los Angeles Railway Corporation (a corporation),

Appellee.

BRIEF OF APPELLEE, LOS ANGELES RAILWAY CORPORATION.

STATEMENT.

Los Angeles Railway Corporation, appellee, operates a unified rail and motor bus transportation system in and adjacent to the city of Los Angeles. Its street cars occupy the streets of the city under and by virtue of certain franchises granted by the city of Los Angeles and by the county of Los Angeles. The franchises granted by the City provide for a 5¢ fare.

On November 17, 1926, the Company applied to the state railroad commission for an increase in fare, claiming its 5¢ fare was confiscatory. [R. 75-111.]

While that application was pending the Company, on May 17, 1927, filed a supplemental application with the Commission praying a 6¢ fare pending the decision of the Commission on its original application [R. 111-161]. Said supplemental application was denied by the Commission June 20, 1927. [R. 161-4.]

The Commission held hearings on said original application at various times up to August 11, 1927, when the matter was submitted [R. 166]. On March 26, 1928, the Commission rendered its Decision No. 19521 denying the Company's said application and refusing an increase in the Company's fare. [R. 165.]

Petition for rehearing [R. 175] having been filed by the Company within the statutory time and denied by the Commission [R. 196], the Company, on June 22, 1928, filed its bill of complaint in the District Court claiming its 5¢ fare was confiscatory and that the Commission's said Decision No. 19521 was arbitrary and violative of its rights under the Federal Constitution.

After extended argument by all parties, and the submission to it of voluminous affidavits, briefs, and **the entire Commission record,** the District Court, Circuit Judge Wm. H. Hunt presiding, issued its permanent injunction on October 1st, 1928, enjoining the enforcement of the Commission's said decision and permitting the Company as a condition of the injunction to charge a fare not in excess of 7¢ cash or 4 tokens for 25¢. [R. 563.]

A stay of injunction pending appeal was unanimously denied by the District Court on October 2, 1928, and by this Court on October 15, 1928.

The increased fare permitted by the injunction was put into effect October 21, 1928, and has since been charged and collected by the Company.

At oral argument in the District Court it was stipulated that the Company's rail and bus operations constituted a unified system and that they were so considered by the Commission [R. 521]; that for the purpose of the motion for injunction the Company would accept the Commission's rate base of $42,000,000 [R. 522-3]; and that the entire case might be finally disposed of on the record then before the court. [R. 523-4.]

The court below, accepting the Commission's own figures, found that the record showed **"very clearly"** that the finding of the Commission that the 5¢ fare was fair and reasonable was not supported by the evidence and that the Company's property was being confiscated. [R. 548.]

In their briefs neither appellant has questioned the sufficiency of the evidence to sustain the conclusion thus unanimously reached by the statutory court. Consequently it would seem unnecessary for us to discuss the question. However, since appellants have not conceded the existence of confiscation and since this Court is free to consider the assignments of error which raise that question, we feel constrained, out of an abundance of precaution, to demonstrate from the record the clear showing of it referred to by the court below. Such a showing, we feel, should logically be at the opening of this brief, in order that the

Court might at once perceive its conclusiveness, but for the convenience of the Court we will first meet the legal points urged by appellants, and thereafter show from the record that the court below was not only justified in the conclusion which it reached on the subject, but could have arrived at no other.

Appellants contend that it is immaterial if the 5¢ fare be clearly shown to be confiscatory, and that the court below was powerless to grant relief therefrom because the fare provisions of the Company's franchises constitute binding contracts which the City had power to make.

ARGUMENT.

The Company contends that under the laws of California the City has never possessed the power to fix public utility rates by contract; that the City never intended so to contract; that, consequently, the Company's franchise fare provisions are not and cannot be binding contract obligations; and that, hence, in this action the Company stands in like position with that presented in *San Antonio v. San Antonio Public Service Co.* (1920), 255 U. S. 545, *i.e.*, a public utility, finding its franchise fares unremunerative and confiscatory, appeals for relief to the only state agency authorized to grant it relief, and upon arbitrary denial of relief there, asks a Federal Court of Equity to preserve to it its constitutional rights against the deprivation of its property without just compensation.

The Company also contends that even assuming for the purpose of argument that the fare provisions of its franchises constitute binding contracts the Commission exercised complete jurisdiction over said fare and abrogated

such contracts when, in 1921, it found the 5¢ franchise fare inadequate and authorized a 6¢ fare.

In supporting this position and the decree below the ensuing argument, therefore, will show:

I. The City has never possessed the power to fix public utility rates by contract.

(a) In California municipal police powers have been zealously guarded from impairment by contract.

(b) A grant of authority to contract away the police power must be unequivocal.

(c) There is no grant of authority to the City to fix public utility rates by contract.

II. Under the state Constitution the Legislature cannot fix public utility rates by contract nor delegate power to the City to do so.

III. In California the grant of a franchise is a legislative function and where, as here, no grant of authority to fix rates by contract exists, franchise fare provisions cannot operate by way of condition or estoppel.

IV. The fare provisions of these franchises evince an intention to regulate not to contract.

V. The Commission has twice exercised jurisdiction over the Company's franchise fare.

(a) Decision No. 9029 (1921).

(b) Decision No. 19521 (1928).

VI. Confiscation.

FRANCHISES.

The Commission concedes, correctly of course, that none of the California decisions relied upon by appellants (all of which in general language refer to a franchise as a contract) involved the power of a city to contract as to

public utility rates. Neither did those cases, nor any others in California, decide that the rates or fares prescribed in a franchise are binding contract obligations or that a city may by contract surrender the police power of the state. In fact, in the case of *St. Helena v. San Francisco, etc., Ry.* (1914), 24 Cal. App. 71, 74, the District Court of Appeals definitely stated the contrary:

> "Of course, regardless of such agreement, it is well settled that the municipality cannot abdicate its functions or by contract divest itself of power to control the streets for the benefit of the public. 'The improvement, regulation and control of the highways within a municipality call for **the exercise of a delegated governmental power, a function which the municipality itself, neither by ordinance nor by contract, can surrender or impair.**' (McNeil v. City of South Pasadena, 166 Cal. 153, 135 Pac. 32.)"
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> *St. Helena v. San Francisco, etc., Ry.* (1914), 24 Cal. App. 71, 74.

That the regulation of public utility rates is an "undoubted power of government" (Home Tel. & Tel. Co. v. Los Angeles (1908), 211 U. S. 265, 273), will scarcely be denied.

I.

THE CITY HAS NEVER POSSESSED THE POWER TO FIX PUBLIC UTILITY RATES BY CONTRACT.

Nowhere in the Constitution or the statutes of the state does there appear sufficient language to indicate the clear and express intention of the state to abrogate its police power and to delegate to municipalities the authority to fix public utility rates by contract. Unless such intention

does clearly and expressly appear, the courts will refuse to imply it from other or general language or as an incident of general powers, and will deny its existence.

The City has heretofore successfully maintained before this Court that it had no power to enter into a binding contract with a public utility fixing rates to be charged. (Home Tel. & Tel. Co. v. City of Los Angeles (1908), 211 U. S. 264, 273.) It can easily be demonstrated that such [redacted] power in the City to fix rates by contract never existed.

(a) In California Municipal Police Powers Have Been Zealously Guarded From Impairment by Contract.

The general principle that municipal police powers cannot be contracted away has been definitely recognized and unequivocally endorsed by the supreme court of California, which has held that even an attempt so to contract would have no force.

In *Laurel Hill Cemetery v. City and County of San Francisco* (1907), 152 Cal. 464, 475-6, a question arose over the power of the city to prevent interments in a cemetery. It was held that the exercise of the future police power of the city would not be affected even if the city had previously contracted with the grantors of the plot to make interments in perpetuity, the supreme court saying:

> "Even if the city and county had made an express contract granting to the plaintiff the right to make interments in this ground in perpetuity, **such contract would have no force as against a future exercise by the legislative branch of the government of its police power.** (Brick Presbyterian Church

v. Mayor, 5 Cow. (N. Y.) 538.) **This power cannot be bargained or contracted away, and all rights and property are held subject to it.** (Boston Beer Co. v. Massachusetts, 97 U. S. 25; Butchers' Union v. Crescent City Co., 111 U. S. 746 (4 Sup. Ct. 652); New Orleans Gas Co. v. Louisiana Light etc. Co., 115 U. S. 650 (6 Sup. Ct. 252).)"

Laurel Hill Cemetery v. City and County of San Francisco (1907), 152 Cal. 464, 475-6.

McNeil v. City of South Pasadena (1913), 166 Cal. 153, arose over an attempt to apportion to a street railway company a part of the cost of paving a street under a general statute. The company contended that its franchise required it to pave only one-fourth of the street and that to compel it to pay a portion of the cost of the entire paving would impair the obligation of its contract. The supreme court held:

"The improvement, regulation, and control of the highways within a municipality call for the exercise of a **delegated governmental power, a function which the municipality itself, neither by ordinance nor by contract, can surrender or impair.** The city of South Pasadena draws its powers from the general laws—the Vrooman Act. It is its duty to exercise those powers upon every proper occasion. It could as well attempt to surrender all or part of its **police powers** as to attempt to bind itself not to perform the administrative duty and trust in regard to its public streets imposed upon it by general law."

McNeil v. City of South Pasadena (1913), 166 Cal. 153, 156.

(b) A Grant of Authority to Contract Away the Police Power Must Be Unequivocal.

It is established in California that statutes defining the powers of a municipal corporation must be strictly con-

strued against such corporation and in cases of doubt the power denied.

The state supreme court in construing certain provisions of a charter of the city of Stockton, relating to public utilities, in *Oro Electric Corporation v. R. R. Commission* (1915), 169 Cal. 466, 477, said:

> "It is thoroughly settled that language purporting to define the powers of a municipal corporation is to be strictly construed, and that any **'fair, reasonable doubt concerning the existence of the power is resolved by the courts against the corporation, and the power is denied.'** (1 Dillon on Municipal Corporation, Sec. 89.) This rule has been clearly announced by this court in various cases, of which it will suffice to cite Von Schmidt v. Widber, 105 Cal. 151 (38 Pac. 682), and Hyatt v. Williams, 148 Cal. 585 (84 Pac. 41.)
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> *Oro Electric Corporation v. R. R. Comm.* (1915), 169 Cal. 466, 477.

And this Court, in construing the provisions of a charter of the city of Los Angeles, upon the successful contention of the **City** that a franchise fixing telephone rates **did not** constitute a binding contract, held, in *Home Tel. & Tel. Co. v. City of Los Angeles* (1908), 211 U. S. 265, 272-3:

> "Two questions obviously arise here. Did the city council have power to enter into a contract fixing, unalterably, during the term of the franchise, charges for telephone service, and disabling itself from exercising the charter power of regulation? If so, was such a contract in fact made? * * * The surrender, by contract, of a power of government, though in certain well defined cases it may be by legislative authority, is a very grave act, and the surrender itself, as well as the authority to make it, must be closely scrutinized. No other body than the supreme legis-

lature (in this case, the legislature of the state) has the authority to make such surrender, unless the authority is clearly delegated to it by the supreme legislature. The general powers of a municipality or of any other political subdivision of the state, are not sufficient. **Specific authority for that purpose is required.** This proposition is sustained by all the decisions of this court, which will be referred to hereafter, and we need not delay further upon this point * * *. (pp. 272-3.)

"* * * But for the very reason that such a contract has the effect of extinguishing *pro tanto* an undoubted power of government, both its existence and the authority to make it must clearly and unmistakably appear, **and all doubts must be resolved in favor of the continuance of the power.**" (p. 273.)

Home Tel. & Tel. Co. v. City of Los Angeles[1] (1908), 211 U. S. 265, 272-3.

This fundamental rule of statutory construction was also tersely stated by the District Court of the Northern District of California in *San Francisco-Oakland Terminal Rys. v. City of Alameda* (1914), 226 Fed. 889, 890, where, in holding that many of the same statutory enactments relied upon by appellants here granted no power to contract as to street railway fares, said:

"* * * neither the existence of the contract nor the power to make it is to be deduced by means of refined construction of terms or shadowy implication from general language, but must appear from

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[1]See, also:

Railroad Commission Cases (1885), 116 U. S. 307, 325;

Milwaukee Elec. Ry. & Light Co. v. R. R. Comm. (1915), 238 U. S. 174, 180;

Paducah v. Paducah Ry. Co. (1923), 261 U. S. 267, 272.

the plain and unequivocal expression of such purpose."

San Francisco Oakland Term. Rys. v. City of Alameda (1914), 226 Fed. 889, 890.

(c) THERE IS NO GRANT OF AUTHORITY TO THE CITY TO FIX PUBLIC UTILITY RATES BY CONTRACT.

Appellants contend that several legislative enactments confer upon the City the power to contract as to public utility rates. It is significant that in none of them is there any express grant of such power nor any language from which, under the well established rule of construction above shown, the intention of the Legislature so to do clearly and unmistakably appears. In the court below the City conceded that it had never been granted the authority to contract away the police power of the state to regulate rates.[2]

Civil Code.

Section 497, Civil Code, relied upon by appellants, undoubtedly confers upon the City the power to grant street railway franchises **"under such restrictions and limitations and upon such terms * * * as the city * * * authority may provide."**

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[2]City's brief before District Court, referring to the *Home Telephone* case and the *San Francisco Oakland Terminal Railway* case, *supra*, said:

"From the foregoing cases it is apparent that the state has never relinquished its right to regulate the rates of public utilities."—(p. 13.)

"These cases undoubtedly indicate that this city has never obtained the power to barter away the police power of this state—the power to regulate the rates of fare set forth in franchise contracts, subsequent to the date they are granted."—(p. 14.)

Section 501, Civil Code, also relied upon by appellants, (providing that the rates of fare on street cars must not exceed 10¢ and in municipal corporations of the first class must not exceed 5¢) contains, of course, no grant of power but is simply a limitation on the power conferred by the preceding section 497. Moreover, the city of Los Angeles has never been a city of the first class. (Stats. 1897, p. 42; Stats. 1901, p. 94; Stats. 1911, p. 476; Stats. 1921, p. 1654; Department of Commerce Statistical Abstract of U. S. 1928, p. 44.)

Both of these sections of the Civil Code, however, have definitely been held not to carry the power to contract for street railway rates. In the case of *San Francisco Oakland Terminal Railway v. City of Alameda* (D. C. 1914), 226 Fed. 889, 890-1, the city of Alameda had fixed railway rates by franchise. Subsequently, the city sought to lower the franchise rates by ordinance and the company sought an injunction in the Federal Court which was denied and the bill dismissed on motion of the city. The company contended that the fares fixed by the franchise constituted a contract. The District Court for the Northern District of California, in passing upon the question, reviewed the provisions of the Municipal Corporation Act of 1883 which gave to cities of that class the power **"to permit, under such restrictions as they may deem proper, the laying of railway tracks"** and **"to do and perform any and all other acts and things necessary or proper to carry out the provisions of this charter and to exact and enforce within the limits of such city all other local, police, sanitary, and other regulations as do not conflict with general laws"**; the provi-

sions of the freehold charter of said city which provided that the city had power **"to fix, alter, regulate and control fares * * * on all * * * railways within the city * * *;"** and the provisions of **Civil Code, sections 497, 501 and 503.** Holding that under none of these statute or charter provisions was there any power to contract, the court said:

> "* * * No attempt is made by plaintiff to point out in any general statute governing its powers or in its charter any specific grant of authority to the city to contract away, even for a limited time, the governmental power of rate regulation; but the argument is that such authority is to be implied from the powers expressly conferred, and the want of any express reservation against the right to contract, as to such rates. But it will be readily seen that, within the limitations of the above stated principles, no such implication can be predicated of the language employed by the Legislature in any expression it has given upon the subject. * * *
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> "It is apparent that these provisions, **especially those of the Civil Code and the charter,** while undoubtedly conferring power upon the city to regulate rates, are wholly wanting in any expression either directly or by implication indicating a purpose on the part of the Legislature to authorize a municipality to restrict or barter away the power there given."
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> *San-Francisco-Oakland Terminal Ry. v. City of Alameda* (D. C. 1914), 226 Fed. 889, 890-1.

Franchise Acts.

The Franchise Act of 1893 (Stats. 1893, p. 288), and the Broughton Franchise Act (Stats. 1905, p. 777), which replaced it, both of which are referred to by appellants, each contain, as originally enacted and as amended, and as they continued to be the law of the state up to 1915,

the identical language that the franchises therein mentioned **"shall be granted upon the conditions in this act provided, and not otherwise."** In the *Home Telephone case, supra,* this Court, in construing this same language of this same act, said:

> "Here is an emphatic caution against reading into the act any conditions which are not clearly expressed in the act itself. In view of this language it cannot be supposed that the legislature intended that so significant and important an authority as that of contracting away a power of regulation conferred by the charter should be inferred from the act, in the absence of a grant in express words. But there is no such grant."
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> *Home Tel. & Tel. Co. v. City of Los Angeles* (1908), 211 U. S. 265, 275-6.

Moreover, the state supreme court in 1915 held that the Broughton Franchise Act contained no grant of power but was simply procedural, saying in the *Oro Electric Corporation case, supra:*

> "Finally, the petitioner claims that the 'Broughton Act' (Stats. 1905, p. 777), gave to every city authority to grant franchises for transmitting electric light and power. But we think it clear that this act merely places restrictions upon the granting of franchises, where the power to grant such franchises exists otherwise. As was said in *Sunset Tel. & Tel. Co. v. Pasadena,* 161 Cal. 265, 272 (118 Pac. 796), the 'whole purpose' of the act 'was to prescribe the method and conditions upon which the franchises included within its terms might be granted by the legislative body authorized by law to make the grant'. The act does not authorize any board or council to grant a franchise."
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> *Oro Electric Corp. v. R. R. Commission* (1915), 169 Cal. 466, 482-3.

It is clear, therefore, that neither the above quoted sections of the Civil Code nor of the franchise acts up to 1915, confer any power on the City to contract as to street railway or any other public utility rates. To hold that they do would require an implication almost as shadowy as the other contention of appellants that because they found no power in the city prior to 1905 to regulate rates it followed that the city must have had power to contract as to them.

Appellants further contend, in substance, that the 1915 amendment to section 1 of the Broughton Franchise Act providing that

> "The grantor may, however, in such franchise impose such other and additional terms and conditions not in conflict herewith, whether governmental or contractual in character, as in the judgment of the legislative body thereof are to the public interest." (Stats. 1915, p. 1301.)

empowers the city to write contractual fare provisions in street railway franchises.

It is submitted that the addition of this sentence to the Broughton Act in 1915 did not and could not confer upon the city of Los Angeles the power to fix rates by contract for several very good reasons. First, as stated above, the California supreme court has held the Broughton Act merely to place restrictions upon the granting of franchises and not to be a grant of power. (*Oro Electric Corp. v. R. R. Commission* (1915), 169 Cal. 466, 482-3.) Secondly, since the Act is a restriction upon the power of a municipal corporation to impose conditions on the grant of a franchise and since it might be desirable to allow a city to impose conditions other than those specified which

it might otherwise have power to impose **in exercise** of its police powers rather than in derogation of them, as for instance, requiring a grantee railway to sprinkle the streets or pave a portion of them, the amendment was probably enacted to remove the implied restriction from section 1, to the effect that the franchise "shall be granted on the conditions in this Act provided **and not otherwise.**" Thirdly, in view of the fact that this Court had construed the Broughton Act as not sufficient to confer the power upon the city of Los Angeles to fix rates by contract and had clearly emphasized the necessity for an unambiguous grant of such power if it is to exist, the Legislature surely would not have used such general language as that contained in the 1915 amendment had it had the slightest intent to grant this important power to municipal corporations. Lastly, under the decisions of the California supreme court the Broughton Franchise Act has had no application, force or effect in the city of Los Angeles since the amendment of the charter of said City in 1913. After that charter amendment, the entire Broughton Franchise Act, as we will now show, became wholly inoperative in the City of Los Angeles, so the 1915 amendment to the said act, of course, never applied.

The state Constitution has provided without pertinent change since 1879 that any city containing a population of more than thirty-five hundred inhabitants might frame a charter for its own government "consistent with and subject to the Constitution" by adopting such charter at a municipal election and submitting the same to the Legislature for approval or rejection (Constitution, section 8, Article XI). It is further provided (section 6, Article

XI) that all charters framed or adopted by authority of the Constitution "except in municipal affairs, shall be subject to and controlled by general laws". From these constitutional provisions the state supreme court has definitely established that where a freeholders' charter of a city provides a complete scheme with respect to any given subject, a general law on the same subject is no longer applicable within that city, even though such general law contain some provisions which might be enforced without conflicting with the charter provision. The interpretation of the constitutional sections by the supreme court is that the requirements of such charter provisions are exclusive as to municipal affairs and contain all of the conditions and requirements that can be imposed. It will not be denied that at least since 1889 the city of Los Angeles has been a freehold charter city. (Stats. 1889, p. 455.) It can scarcely be denied that the granting of a street railway franchise is a municipal affair. (*City of San Diego v. Kerckhoff* (1920), 49 Cal. App. 473, 480.)

In *Loop Lumber Co. v. Van Loben Sels* (1916), 173 Cal. 228, 232-234, the freeholders' charter of the city and county of San Francisco contained a complete scheme for letting contracts for public works, but made no mention of a bond to protect labor and material men. A general law of the state required such a bond to be filed. The state supreme court held that such a bond given by a contractor for the construction of a public work in the city and county of San Francisco was unenforcible as being without consideration, saying:

"But at the time of the execution of this contract and the giving of this bond, section 6 of Article XI

of our state Constitution was such as to make the freeholders' charter of cities and towns absolutely controlling and free from impairment by general laws of the state, as to all 'municipal affairs'. Although the phraseology of the section was changed by the amendment adopted November 3, 1914, the same result still obtains. In so far as such a charter makes provision relative to any 'municipal affair', it is the supreme law, paramount to any law enacted by the state Legislature, and general laws enacted by the Legislature in regard thereto can have no application. * * *

"And we do not think it can be seriously questioned that a municipality may provide in its freeholders' charter for a complete scheme for the doing of such work that will be paramount to anything contained in any act of the State Legislature, and that in regard to such municipality anything contained in any general law of the state that is inconsistent with the charter provisions must be inoperative. * * *

"* * * It seems to us to be perfectly clear that a state statute imposing other conditions on the contractor, and prohibiting the commencement of work under the contract until he has complied therewith, is inconsistent with the charter provisions on the subject, and, consequently, ineffectual for any purpose. It is urged that the act is not in conflict with the charter for the reason that the latter contains no provision at all in regard to such a bond as is required by the act—**neither requires such a bond nor in terms declares that no such bond is essential**. But this in no degree affects the question. * * * Any law purporting to impose other conditions as a prerequisite to doing the work is necessarily inconsistent with the charter. It is not a case where the charter is silent upon the matter, and the au-

thorities cited by respondent in this connection are therefore not in point."

Loop Lumber Co. v. Van Loben Sels (1916), 173 Cal. 228, 232-234.

Similarly, the supreme court held that the freeholders' charter provision of the city and county of San Francisco for issuing bonds for public improvements superseded the State Park and Boulevard Act (*Fritz v. San Francisco* (1901), 132 Cal. 373, 375, 376), and that the freehold charter provision of the city of Los Angeles on the question of opening a crossing over a railroad right-of-way superseded the provisions for condemnation proceedings under the state Public Utilities Act of 1915 (*City of Los Angeles v. Central Trust Company* (1916), 173 Cal. 323, 327, 328).

This interpretation of the state constitutional provisions was likewise applied to the Broughton Franchise Act in *City of San Diego v. Kerckhoff* (1920), 49 Cal. App. 473, 480. There the freeholders' charter of the city of San Diego contained a power to the city to grant franchises. The question arose as to whether the city charter provisions or the Broughton Act controlled, and the court decided that the city charter provision must control, saying:

"As has heretofore been stated, the municipal charter of San Diego covered the subject of granting franchises for street railroads at the time respondents' grant was made. That subject being a municipal affair, the charter provisions controlled over the Broughton Act. * * *"

City of San Diego v. Kerckhoff (1920), 49 Cal. App. 473, 480.

In 1913 the freeholders' charter of the City of Los Angeles was amended[3] to provide for an entire and complete system for granting franchise over the streets of the city, such provision being similar to the charter provision of the city of San Diego construed in *City of San Diego v. Kerckhoff, supra.*

Under the *Loop Lumber Co. case* and the *Kerckhoff case, supra,* this charter amendment manifestly rendered the Broughton Franchise Act and its 1915 amendment of no force and effect in the city of Los Angeles.

City Charters.

Appellants also rely upon the 1905 amendment to the charter of the City as a possible source of power to fix rates by contract. This amendment added subdivision 25 to section 2, Article I of said charter, as follows:

> "(25). No franchise, right or privilege in, on, through, across, under or over any street, avenue, alley, bridge, viaduct or other public place, and no other franchise whatever granted by the city to any corporation, association or individual, shall be granted except by an ordinance passed by a vote of two-thirds (2/3) of the whole council, nor for a longer period than twenty-one years. **Such grant and any contract in pursuance thereof** shall provide that at the

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[3]"(40). To grant franchises, permits or privileges for the construction and operation of plants necessary or convenient for furnishing the city and its inhabitants with **transportation,** communication, terminal facilities, water, light, heat, power, refrigeration, storage, or any other public service; **to prescribe the terms and conditions of any such grant, and to prescribe by ordinance,** approved by a vote of the people, **the method of procedure for making such grants;** * * *." (Stats. 1913, pp. 1629-33.)

option of the city, declared not more than three (3) years nor less than six months before the termination of such grant, the plant and property, if any, belonging to or used by the grantee, or his or its successors in interest, in the streets, avenues and other public places shall, at the termination of said grant, upon the payment of a fair valuation thereof, be and become the property of the city; but the grantee shall be entitled to no payment because of any valuation derived from the franchise. **Provided, however,** that such option shall not be exercised unless at the time of exercising the same the city shall be authorized and empowered to acquire and operate such plant and property. **Every grant** shall specify the mode of determining any valuation therein provided for and the time and mode of payment, and shall make adequate provision by way of forfeiture of the grant or otherwise to secure efficiency of public service at reasonable rates and the maintenance of the property in good order throughout the terms of the grant." (Stats. of 1905, p. 994.)

Tracing the legislative history of said subdivision 25 clearly indicates that this subdivision was not a grant of power to the City, but a limitation upon its powers.

The charter as it existed prior to the said amendment of 1905 enumerated the powers of the City in section 2 thereof, followed by 24 subdivisions reading as follows:

> "Section 2. The said corporation shall have the power: (1) to make and use a corporate seal and alter the same at pleasure; (2) to sue and be sued in all actions and proceedings whatever; * * * (7) to provide for supplying the city and its inhabitants with water and gas, or either, or with other means of heat, illumination or power * * *." etc., etc. (Stats. 1889, p. 456.)

Each of the first twenty-three subdivisions is an express grant of power, and each of them begins with the word "to". Subdivision 24 read:

"(24). The powers conferred by this Article shall be exercised by ordinance, except as hereinafter provided."

Three new subdivisions were added to section 2 in 1905 and 1909 and each of them is obviously a **limitation** upon the powers of the City. These new subdivisions were added after subdivision 24, as subdivisions 25, 26 and 27, and read in part as follows:

"(25). No franchise right or privilege in, on, through, across * * * any street * * * shall be granted", etc.,

"(26). No wharf, dock, sea-wall, railroad, street railroad * * * owned or controlled by the city of Los Angeles * * * shall ever be sold, transferred, leased or disposed of * * * without the consent of two-thirds of the qualified voters * * *."

"(27). The bed of the Los Angeles River * * * shall not * * * be sold, granted, leased, transferred or alienated in any way * * *." (Article 1, section 2, Charter of Los Angeles; Stats. 1905, p. 994; Stats. 1909, p. 1292.)

In 1911 the charter was further amended to add fifteen new powers (Statutes of 1911, pp. 2051, 2065.) It is striking that all fifteen of these new powers were placed before subdivision 24 and numbered subdivisions 24 to 38. Each grant commenced with the word "to", and former subdivision 24 followed them all as new subdivision 39. With the obvious intent of continuing former subdivisions 25, 26 and 27, *supra,* as limitations, they were renumbered as subdivisions 40, 41 and 42, without substantial change in wording. In 1913, the language of subdivision 40 of section 2 of the charter was amended to become for the first time a grant of power, reading as follows:

> "(40). **To grant** franchises, permits, or privileges for the construction and operation of plants necessary or convenient for furnishing the city and its inhabitants with transportation * * *." (Stats. of 1913, pp. 1629, 1633.)

Here again it is significant that when the 1905 subdivision 25, *supra,* was amended in 1913 to grant express power to grant franchises all reference therein to "any contract in pursuance thereof", and to the requirement for making "provision by way of forfeiture * * * for efficiency of public service at reasonable rates" was **deleted.**

Despite the fact that subdivision 25 of section 2 of the charter of 1905, (which later, 1911, became subdivision 40 of the same section) was until 1913 obviously a limitation on the City rather than a grant of power, appellants attempt to draw an inference of a grant of power to the City to fix rates by contract from the language of that subdivision, as it existed prior to 1913, to the effect that "such grant and any contract in pursuance thereof shall provide" that the City shall have an option to purchase the property of the utility. It will be noted, however, that the phrase above quoted is from another part of the subdivision than that making any reference to rates. The portion of the subdivision with respect to rates reads:

> "Every grant shall specify the mode of determining any valuation therein provided for and the time and mode of payment, and shall make adequate provision by way of forfeiture of the grant or otherwise, to secure efficiency of public service at reasonable rates and the maintenance of the property in good order throughout the term of the grant." (Stats. 1905, p. 994.)

Appellants further seek to draw an inference that the power to fix rates by contract was granted by the last sentence quoted with respect to reasonable rates, on the grounds that the City had no power to regulate rates in 1905 when subdivision 25 was added and that, therefore, the requirement that every grant should make provision by way of forfeiture or otherwise to secure efficiency of public service at reasonable rates must have been a grant of power to contract for rates. In the first place, as we will soon show, the City had power to regulate rates since 1879 so the very basis of the contention does not exist. Furthermore, since the legislative intent is so unclear as to require such strained implications, the firmly established rule of construction for such grants, hereinbefore discussed at length, would require that the foregoing language be construed as a grant of power to regulate only. This Court has already so construed similar language. In Illinois, the statutes provided as follows:

> "The city * * * authorities * * * may contract with such incorporated company for a supply of water for public use, for a period not exceeding thirty years.
>
> "The City Council * * * shall have power to provide for a supply of water by the boring or sinking of artesian wells, etc., * * * and to authorize any person or private corporation to construct and maintain the same at such rates as may be fixed by ordinance, and for a period not exceeding thirty years; * * *." (Freeport Water Co. v. Freeport (1901), 180 U. S. 586, 599-600.)

That this language might be construed either as granting the power to fix rates by contract throughout the term of the grant or to fix rates from time to time, that is, to regulate, was the holding of this Court in *Freeport*

Water Co. v. Freeport (1901), 180 U. S. 586, 600, where, after stating the fundamental rule of construction in such cases, it said:

> "* * * Our conclusion is that the powers conferred by the statutes of 1872 can, without straining, be construed as distributive. The city council was authorized to contract with any person or corporation to construct and maintain waterwords *'at such rates as may be fixed by ordinance, and for a period not exceeding thirty years.'* The words,*'fixed by ordinance,'* may be construed to mean by ordinance once for all to endure during the whole period of thirty years; or by ordinance from time to time as might be deemed necessary. Of the two constructions that must be adopted which is most favorable to the public, not that one which would so tie the hands of the council that the rates could not be adjusted as justice **to both parties** might require at a particular time."
>
> *Freeport Water Co. v. Freeport* (1901), 180 U. S. 586, 600.

Furthermore, the very basis of appellants' contention that the general language of subdivision 25 of the charter of 1905, *supra,* should be construed as a grant of power to contract for rates because the City had no power to regulate prior to that time, does not exist. The power to regulate public utility rates was granted to every municipal corporation in the state by section 11, Article XI of the state Constitution, adopted in 1879, which provides:

> "Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws."

In defining the scope of this constitutional grant the supreme court of California has said:

> "Under this provision, every county, city, town, or township may adopt and enforce such constitutional police regulations as are not in conflict with general laws. It has the same power over its own local police and sanitary affairs as were formerly granted by the Legislature, and unless the exercise thereof will conflict with the operation of general laws, it may make and enforce the same through its local government."
>
> *Ex Parte Campbell* (1887), 74 Cal. 20, 23.

and, particularly as to Los Angeles, that

> "There is, of course, no doubt as to the possession by the municipality of Los Angeles of legislative power. By Section 11 of Article XI of the Constitution, * * * the people of the state 'have made a direct constitutional grant of the police power of the state to every municipal corporation for local purposes.'"
>
> *In re Pfahler* (1906), 150 Cal. 71, 80.[4]

And that this constitutional grant includes the power to regulate public utility rates is clearly indicated in *Denninger v. Recorder's Court* (1904), 145 Cal. 629, 631, where it was said:

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[4]See, also:

In re Isch (1917), 174 Cal. 180, 181-2;

In re Montgomery (1912), 163 Cal. 457, 459;

In re Smith (1904), 143 Cal. 368, 371;

Oddfellows' Cemetery Ass'n. v. San Francisco (1903), 140 Cal. 226, 230, 231;

Ex Parte McClain (1901), 134 Cal. 110;

De Baker v. Railway Company (1895), 106 Cal. 257, 283.

"By this section (Sec. 11, Article XI) the people have made a direct constitutional grant of the police power of the state to every municipal corporation for local purposes. It is conceded by the petitioner that the general grant of legislative power in the Constitution of a state includes the power to regulate gas rates by statute, and that this power may be delegated by statute to municipal corporations. If this is so, and if the regulation of gas rates by the state is an exercise of the police power, it would be difficult to say why, in the absence of more specific provisions in our Constitution relating to this matter, the municipal corporations of the state could not by virtue of the section above quoted adopt and enforce within their local limits ordinances as comprehensive, both as to the establishment of rates and the infliction of penalties, as the statutes which the Legislature is competent to enact for the state at large. But these are questions which we do not find it necessary to decide."

Denninger v. Recorder's Court (1904), 145 Cal. 629, 631.

and by the holding in *Ex Parte Lorenzen* (1900), 128 Cal. 431, 436, that an ordinance of the city of San Francisco regulating the issuance of street railway transfers was a valid exercise of the city's police power under section 11, Article XI of the Constitution.

Moreover, the charter of 1889 of the city of Los Angeles provided in Article III, section 29, that the city council

"shall, by ordinance, establish stands for hacks and other vehicles for hire, and regulate the charges of hacks and other vehicles carrying passengers for hire, and require a schedule of such charges to be posted in every such hack or other passenger vehicle." (Stats. 1889, p. 464.)

Could any doubt remain that section 11, Article XI of the Constitution invested municipalities with the power to regulate public utility rates it is at once dispelled by a reading of section 23, Article XII, as amended November 3, 1914,[5] whereby all political subdivisions of the state were expressly divested of **all** their powers respecting public utility **rates** but not of such of their **"powers of control over public utilities as relate to the making and enforcement of local, police, sanitary and other regulations, other than the fixing of rates."** The continued powers are in the identical language of section 11, Article XI, *supra,* from which the power over rates is expressly excepted, indicating clearly that the enumerated powers otherwise would have included the power to regulate rates.

The record shows that all of the Company's 102 franchises, except 13, were granted between 1879 and November 3, 1914. [R. 388-91.]

It thus appears that from 1879 to November 3, 1914, the City had the power to regulate rates but that none of the above discussed enactments, from which appellants seek to derive a power in the city to contract as to such rates, contain any express grant of such power or even any language from which its existence could be fairly or reasonably implied.

Section 23, Art. XII, Constitution.

On November 3, 1914, section 23 of Article XII of the state Constitution was amended[5] to confer upon the Rail-

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[5]Section 23: "* * * The railroad commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the state of California,

and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the Legislature, and the right of the Legislature to confer powers upon the Railroad Commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution. From and after the passage by the Legislature of laws conferring powers upon the Railroad Commission respecting public utilities, all powers respecting such public utilities vested in boards of supervisors, or municipal councils, or other governing bodies of the several counties, cities and counties, cities and towns, in this state, or in any commission created by law and existing at the time of the passage of such laws, shall cease so far as such powers shall conflict with the powers so conferred upon the Railroad Commission; provided, however, that this section shall not affect such powers of control over public utilities as relate to the making and enforcement of local, police, sanitary and other regulations, other than the fixing of rates, vested in any city and county or incorporated city or town as, at an election to be held pursuant to law, a majority of the qualified electors of such city and county, or incorporated city or town, voting thereon, shall vote to retain, and until such election such powers shall continue unimpaired; but if the vote so taken shall not favor the continuation of such powers they shall thereafter vest in the Railroad Commission as provided by law; and provided, further, that where any such city and county or incorporated city or town, shall have elected to continue any of its powers to make and enforce such local, police, sanitary and other regulations, other than the fixing of rates, it may, by vote of a majority of its qualified electors voting thereon, thereafter surrender such powers to the Railroad Commission in the manner prescribed by the Legislature; and provided, further, that this section shall not affect the right of any city and county or incorporated city or town, to grant franchises for public utilities upon the terms and conditions and in the manner prescribed by law. Nothing in this section shall be construed as a limitation upon any power conferred upon the Railroad Commission by any provision of this Constitution now existing or adopted concurrently herewith." (Stats. 1915, pp. lv-lvi.)

road Commission full power and jurisdiction to supervise and regulate public utilities and to fix rates of charges for their services:

> "Provided, however, that this section shall not affect such powers of control over public utilities as relate to the making and enforcement of local, police, sanitary and other regulations, **other than the fixing of rates** * * * (until such powers are surrendered by the cities at an election).
>
> "* * * and provided, further, that this section **shall not affect** the right of any city and county or incorporated city or town, to grant franchises for public utilities upon the terms and conditions and in the manner prescribed by law."

The amendment also provided that the Legislature should confer the necessary powers upon the Commission, and this was immediately done by the re-enactment of the 1911 Public Utilities Act, so as to conform with the newly amended constitutional section. (Stats. 1915, p. 115.)

Appellants also place reliance upon this latter proviso but construed in the light of the new state policy of regulation this constitutional section, as then amended, clearly evidences a definite expressed purpose to divest all political subdivisions of the state of **all** their powers respecting the fixing of public utility rates. Such political subdivisions, not having theretofore had any power to fix public utility rates by contract, but only the power to regulate, it was of course unnecessary to make any reference in the amended section to the divesting of a power to contract. The proviso concerning franchises was added to the section, we submit, simply for the purpose of preserving to those cities (which might thereafter vote to

surrender to the Commission all their local, police, sanitary and other regulations) their power to grant public utility franchises to use the streets upon the terms and conditions, and in the manner prescribed by law. None of such political subdivisions, as we have shown, had ever been given the power to contract as to public utility rates, but only the power to regulate. Manifestly, then the insertion of this proviso in the amended section does not preserve to them a power they never possessed. Furthermore, the section cannot be construed to be a grant of power to the city of Los Angeles at all. The section itself provides that it **"shall not affect"** the rights of any city to grant franchises upon the terms and conditions and in the manner prescribed by law. This would as clearly negative any intent to confer powers upon the city as it would an intent to take them away. The section leaves the City whatever powers it might have had to contract for rates (which we have seen are none) but grants no such power.

Sec. 27, Public Utilities Act.

Finally, appellants rely upon section 27 of the Public Utilities Act as amended in 1915, which reads as follows:

> "No street or interurban railroad corporation shall charge, demand, collect or receive more than five cents for one continuous ride in the same general direction within the corporate limits of any city and county, or city or town, except upon a showing before the commission that such greater charge is justified; **provided, that until the decision of the commission upon such showing, a street or interurban railroad corporation may continue to demand, collect and receive the fare lawfully in effect on November 3, 1914.** Every street or interurban railroad corpo-

> ration shall upon such terms as the commission shall find to be just and reasonable, furnish to its passengers transfers entitling them to one continuous trip in the same general direction over and upon the portions of its lines within the same city and county, or city or town, not reached by the originating car." (Stats. 1915, pp. 115, 131.)

The proviso in this section allowing a street railroad corporation to continue to demand, collect and receive the fare lawfully in effect November 3, 1914, could, we submit, in no wise be construed as a grant of power to the city of Los Angeles to fix rates by contract. This section merely amounts to a legislative affirmance **to the companies** of the fares which had theretofore been fixed by political subdivisions; **a statutory fixing** of the fares in effect prior to the new section 23, Article XII of the Constitution which divested such political subdivisions of all their powers over rates. Under well established and familiar principles such fares would be subject to the exercise of federal injunctive powers when, as here, they became confiscatory and the Commission, after proper showing, denied relief.

II.

UNDER THE STATE CONSTITUTION THE LEGISLATURE CANNOT FIX PUBLIC UTILITY RATES BY CONTRACT NOR DELEGATE POWER TO THE CITY TO DO SO.

With the mass of legislation on the subject of public utilities, it would be hard to imagine any state where the people and the Legislature had so studiously avoided any enactment which might logically be construed to

grant to municipal corporations the power to fix public utility rates by contract. The reason for this striking absence of any such authority is not difficult to find.

The Bill of Rights of the people of the state of California expressly forbids unalterable privileges or immunities, where, in section 21, Article I of the state Constitution, it is provided that:

> "**No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the Legislature;** nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens."

That this section is not to be construed as a limitation upon the right therein reserved by the people, is clear from the further provision of said Bill of Rights that:

> "This enumeration of rights shall not be construed to impair or deny others retained by the people." (Sec. 23, Article I, Constitution.)

Municipal corporations are bound by the provisions of section 21, Article I of the Constitution, for it has been specifically held by the California courts that the powers of municipal corporations under section 11, Article XI, granting police powers to cities, is limited by said section 21, Article I.

In re Blois (1918), 179 Cal. 291, 294-5, it was held:

> "The source of the power of municipalities to enact ordinances of the general character of that here under review is to be found in article XI, section 11, of the state constitution, reading as follows:
>
> " 'Any county, city, town, or township may make and enforce within its limits all such local, police,

sanitary, and other regulations as are not in conflict with general laws.' In the exercise of the powers thus conferred the municipality is limited by the terms of article I, section 21 of the constitution, which provides:

"'No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.'"

In re Blois (1918), 179 Cal. 291, 294-5.[7]

Furthermore, all provisions of freeholders' charters such as the one under which the city of Los Angeles is governed are expressly subject to the Constitution, section 8 of Article XI providing:

"Any city * * * may frame a charter * * * consistent with and subject to this constitution * * *."

Since the people of California have so carefully forbidden irrepealable laws or uncontrollable privileges or immunities in their Bill of Rights and since the rights reserved to the people therein are, by express provision of the Constitution, not to be construed as limited to the enumerated rights, it is difficult to see how power to make irrevocable contracts could impliedly have been granted to the cities of California or how a charter provision (if any existed) granting such power would be consistent with the provisions of the Constitution.

Where such constitutional restrictions upon the power of the legislature to grant irrevocable privileges or im-

[7]See also:
Matter of the Application of Hines (1917), 33 Cal. App. 45, 47.

munities exist, the federal courts have held that in the absence of any state decision to the contrary franchise rates cannot be of any effect as a contract between the municipality and the utility.

It is a well established proposition in this Court that:

> "There can be no question in this Court as to the competency of a state Legislature, **unless prohibited by constitutional provisions,** to authorize a municipal corporation to contract with a street railway company as to the rates of fare, and so to bind during the specified period any future common council from altering or in any way interfering with such contract."
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> *Detroit v. Detroit Citizens Street Ry. Co.* (1902). 184 U. S. 368, 382.

But where a state Constitution denies the power to the legislature to fix rates by contract or to delegate authority to do so to a municipal corporation the federal courts hold that even though there was an attempt to delegate such authority and an attempt by the municipal corporation to exercise the same, no contract resulted. Consequently, even though the state or its commission refused to raise the rates specified in franchise ordinances, the federal courts have enjoined the enforcement of such franchise rates, and have granted affirmative relief to the public utility.

The Texas Constitution, in section 17, Article I, contains the following language:

> "No person's property shall be taken, damaged or destroyed for, or applied to, public use without adequate compensation being made, unless by the consent of such person; and when taken, except for the use of the state, such compensation shall be first made, or secured by a deposit of money; **and no**

> **irrevocable or uncontrollable grant of special privileges or immunities shall be made;** but all privileges and franchises granted by the Legislature, or created under its authority, shall be subject to the control thereof."

This language was construed in *San Antonio v. San Antonio Public Service Co.* (1920), 255 U. S. 547, where the city of San Antonio had granted franchises providing for a 5¢ fare. When said fare became unremunerative, the city, which was the body having regulatory control of rates at the time, refused to allow an increase. The railway then filed a bill for injunction in the federal court to prevent the city from enforcing the 5¢ fare. The city moved to dismiss on the ground that the franchise fare constituted a binding contract obliagtion over which the court had no jurisdiction. The federal court held that because of the constitutional provision no contract at all existed with respect to the fare. This Court affirmed the granting of an injunction, saying:

> "Primarily the answer to that question must depend upon whether the ordinance of 1899, fixing the five cent rate, was a contract. That it was not and could not be, we are of opinion, is the necessary result of the provision of section 17, Article 1, of the state Constitution, existing in 1899, prohibiting 'any irrevocable or uncontrollable grant of special privileges,' etc., when considered in the light of the irrevocable and uncontrollable elements which must necessarily inhere in the ordinance of 1899 to give it the contract consequence relied upon."
>
> *San Antonio v. San Antonio Public Service Co.* (1920), 255 U. S. 547, 555.

The Constitution of Colorado provided:

> Article 2, Section 11: "That no * * * law * * * making any irrevocable grant of special

privileges, franchises or immunities, shall be passed by the General Assembly."

Article 15, Section 8: "* * * the police power of the state shall never be abridged * * *."

The city of Denver had granted franchises providing for a 5¢ fare. This fare became unremunerative and the company sought an injunction against its enforcement. The city moved to dismiss on the ground that the rates were set by contract. The Circuit Court of Appeals, in affirming the denial of the motion to dismiss, said:

> "We are also of the opinion that the city of Denver, or the city and county of Denver, never at any time possessed the power to enter into a contract with the tramway company whereby its power to regulate the fares of the company would be definitely suspended for any length of time."
>
> "The claim that the legislative power of the city and county of Denver is not subject to the provisions of the Constitution of Colorado is not supported by reason or authority."
>
> *City and County of Denver v. Stenger* (1922, C. C. A. 8th), 277 Fed. 865, 871, 872.

A similar result was reached under the Constitution of Louisiana, which provided:

> "The exercise of the police power of the state shall never be abridged nor so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the state." (Constitution of Louisiana, Article 263.)

Under this provision the Federal courts held that neither the Legislature nor the city possessed power to fix an unalterable fare by contract.

O'Keefe v. City of New Orleans (1921, D. C., E. D. La.), 273 Fed. 560;

Affirmed: *City of New Orleans v. O'Keefe* (1922, C. C. A. 5th), 280 Fed. 92.

In the cases where it has either been held or assumed that the state legislature was unhampered by any constitutional restriction in granting authority to a city to set franchise contract rates there has always been a state decision so deciding prior to the question coming before the federal courts and such state decision was merely followed, *viz:*

Ohio:

City of Zanesville v. Zanesville Gas Light Co. (1889 Ohio), 23 N. E. 55, 59;

Cleveland v. Cleveland City Ry. Co. (1904), 194 U. S. 517, 534;

Columbus Ry. etc. Co. v. Columbus (1919), 249 U. S. 399, 407.

Michigan:

Pingree v. Michigan Central Ry. Co. (Michigan 1898), 76 N. W. 635, 636;

Detroit v. Detroit Citizens Street Ry. Co. (1902), 184 U. S. 368, 383.

Minnesota:

Ames v. Lake Superior etc. R. Co., 21 Minn. 241;

Minneapolis v. Minneapolis St. Ry. Co. (1910), 215 U. S. 417, 429-430.

Alabama:

Bessemer v. Bessemer Water Works (1907), 152 Ala. 391, 44 So. 663;

City of Opelika v. Opelika Sewer Co. (1924), 265 U. S. 215, 218-9.

Florida:

Southern Utilities Co. v. City of Palatka (1924), 86 Fla. 583, 99 So. 236, 241;

Southern Utilities Co. v. City of Palatka (1925), 268 U. S. 232, 233.

Minnesota:

Reed v. Anoka (1902), 85 Minn. 294, 297, 298, 88 N. W. 981;

St. Cloud Pub. Serv. Co. v. St. Cloud (1924), 265 U. S. 352.

Kentucky:

Paducah v. Paducah R. Co. (1922), 261 U. S. 267, 270.

"On the argument, it was stated by counsel that the city and company have power to contract as to rates, and we so assume."

III.

IN CALIFORNIA THE GRANT OF A FRANCHISE IS A LEGISLATIVE FUNCTION AND WHERE, AS HERE, NO GRANT OF AUTHORITY TO FIX RATES BY CONTRACT EXISTS, FRANCHISE FARE PROVISIONS CANNOT OPERATE BY WAY OF CONDITION OR ESTOPPEL.

As the following decisions will show, the granting of a franchise is legislative in character and any condition imposed therein with respect to which the city had no legislative power is void and of no effect between the city and the grantee. If it is a bond, the bond is without consideration and unenforcible. If it is a rate provision, the rate provision is likewise unenforcible. Furthermore,

no rights can be gained by a municipality nor obligations imposed upon the grantee by reason of the fact that the franchise was required to be accepted in writing, or was voluntarily assumed, or by any element of estoppel.

In *South Pasadena v. Los Angeles Terminal Railway Company* (1895), 109 Cal. 315, 320, one of the conditions prescribed in the franchise ordinance to the defendant railroad, which said franchise was accepted in writing by the utility, was that the rate of fare to Los Angeles should never exceed twenty-five cents. The city of South Pasadena attempted to enforce this condition, but was unsuccessful, the court saying:

> "And if, as claimed by respondent, the case is one of mere contract obligation, then we think it clear that some grant of authority mediately through the legislature—and this would be of doubtful constitutionality—or immediately through the constitution, from the people of the state, either in express terms or by necessary implication, must be exhibited to warrant such a contract; * * *"
>
> *South Pasadena v. L. A. Terminal Railway Co.* (1895), 109 Cal. 315, 320.

In *City of Arcata v. Green* (1909), 156 Cal. 759, 762-5, the city had power by statute "to permit under such restrictions as they may deem proper, the laying of railroad tracks and the running of cars drawn by horses, steam or other power thereon". The city passed an ordinance granting the defendants a franchise to use particular streets in the city upon certain "express conditions" including maintenance of pavement, starting work on the electric line between Eureka and Arcata within ninety days, the giving of a bond, and others. The ordinance required the grantees, within thirty days, to file their

written acceptance of the franchise and the conditions, and they did so. Construction not having been begun within the ninety day period, the city began action on the bond. The state supreme court said:

> "We are still confronted with the question whether the conditions attached to the grant, and incorporated in the bond, were such as the city had the power to impose. In this connection, we do not overlook the allegation that the bond was voluntarily given by the appellants. But, reading the allegation in connection with the averments showing that the giving of such bond was a condition upon which the trustees, by their ordinance, made the grant of the franchise depend, it means no more than that the grantees accepted the franchise upon the only terms available to them. * * * As between private individuals or corporations, having a general power to make contracts, this would undoubtedly have constituted an agreement binding upon the parties to it. Here, however, one of the parties to the alleged contract was a municipal corporation. As such, it had only such powers as were expressly or by necessary implication conferred upon it by the constitution or by statutes passed under the constitution. (Herzo v. San Francisco, 33 Cal. 134; *Ex parte* Frank, 52 Cal. 608 (28 Am. Rep. 642); McCoy v. Briant, 53 Cal. 250; South Pasadena v. Terminal Railway Co., 109 Cal. 315 (41 Pac. 1093).) Section 862 of the Municipal Corporation Act, the only law relied on by appellant as the source of the power to grant the franchise, authorizes the city trustees to permit the laying of tracks, etc., 'under such restrictions as they deem proper'. Conditions may be attached to the grant. But the power to make such grant, and to impose conditions upon it is 'legislative in its nature; * * * and is not referable for its support to the power of making contracts'. (South Pasadena v. Terminal Ry. Co., 109 Cal. 315 (41 Pac. 1093).) Unless the condition or 'restriction' was one within the scope of the legislative power of the municipality, it cannot be

supported as a contract. (City of Aberdeen v. Honey, 8 Wash. 251 (35 Pac. 1097).) That it was not within such scope is, we think, a necessary conclusion from the doctrines declared in the South Pasadena case, already cited. * * *

* * * * * * * * * *

"The appellant urges that the defendants, having received the grant which they sought, are estopped to deny the validity of their undertaking which they gave in consideration of such grant. But we think the doctrine of estoppel has no just application here. A party contracting with a city regarding a subject-matter within the scope of the city's powers may, where he has received the benefit of the contract, be precluded from asserting that the contract was not, on the part of the city, executed in the manner required by law. The doctrine, however, cannot be made to cover contracts entirely beyond the range of the municipal authority. **'If this doctrine be established, then corporations, no matter how limited their powers, may make themselves omnipotent. They have only to induce persons to contract with them beyond the scope of their powers, and their very usurpations have the effect of conferring powers on them which the legislature has withheld. A proposition so erroneous can scarcely need argument to overturn it. * * * We cannot apply the doctrine of estoppel to such a case as this.'** (City Council v. Montgomery etc. Co., 31 Ala. 76.)

City of Arcata v. Green (1909), 156 Cal. 759, 762-4.

San Francisco v. Spring Valley Water Works (1874), 48 Cal. 493, 529, arose out of a grant by the state to use streets on certain conditions, such as that the grantee might under named circumstances charge more than the general law allowed for water. The court held this was not a grant of property by the state but the giving of a franchise in its governmental capacity, saying:

"A private person can certainly grant to a corporation a right of way over his land * * * upon such terms and conditions as may be agreed upon. It is equally true that the state, in its capacity of a proprietor of lands, may do the same thing. It may, in that capacity, grant to a railroad corporation a right of way over lands belonging to the state, on such terms and conditions as it sees fit to impose. In these cases it is merely a matter of contract between parties capable of contracting, in respect to certain rights of property. But the state has no proprietary interest in the streets of a city, dedicated to public use. In its capacity as a sovereign, it may regulate the use, or abolish it altogether. (Polack v. San Francisco Orphan Asylum, 48 Cal. 490.) But, as a general rule, the fee is in the owners of the adjoining lands on each side to the center of the street, and the state can only regulate and control the easement which the public has over the land. When the state grants to a private corporation an easement over the streets, not common to the public at large, it acts in its sovereign capacity * * *"

San Francisco v. Spring Valley Water Works (1874), 48 Cal. 493, 529.

Town of St. Helena v. Ewer (1914), 26 Cal. App. 191, 195-7, involved a franchise ordinance granted under the provisions of section 19, Article XI of the state Constitution, after advertisement and bids. A condition of the ordinance was payment by the grantees of a percentage of gross receipts. The grantees accepted the grant in writing and the city sought to collect the percentage of receipts attempted to be contracted for. The court found that there was no power in the city to make such a condition to the grant, and said:

"It is further contended that * * * the bidder for a franchise has the right, independently of the

statute, to enter into a private contract with the trustees of the town on terms proposed by or agreeable to him. Appellant still further contends that conceding the contract to pay the claim here made to be **invalid,** it is not **illegal** or **unlawful** and hence defendant is estopped to dispute its validity. * * * (p. 195. Italics by court.)

"The contention that the claim may be enforced as the subject of private contract between Ewer and the town cannot be maintained. The facts alleged show beyond dispute that in dealing with the public, as respondent points out, the municipality was acting in its legislative capacity and that its action is not referable, for its support, to the power of making contracts. In City of South Pasadena v. Los Angeles etc. Co., 109 Cal. 315 (41 Pac. 1093), the court said: 'The streets of a city are held as corporate or municipal property and are not subject to the power of contractual disposition, like the property of an individual.' Plaintiff cannot avoid the restraining effect of the constitution by attempting to convert its legislative acts into the contracts. The essence of the ordinance is found in the grant of a franchise for the use of the streets of St. Helena to supply the town and its inhabitants with water, which is purely a legislative act. We cannot escape the fact that the grant was made on condition that the grantee pay for the privilege granted—a condition, as we have seen, which is beyond the power of the municipality to impose. It is no answer that defendant voluntarily entered into the engagement. In its legal sense his acceptance was not voluntary for the reason that his bid would not, nor could that of any other person, have been received without agreeing that he would pay at least three per cent of his gross annual receipts. In fact, probably under the spur of competition, defendant Ewer bid seven and seven-eighths per cent. In the Arcata case, which was an action to recover on a bond given in connection with a grant to build an exclusive railroad, the court said: 'We do not overlook the allegation that the bond was voluntarily

given by the appellants. But, reading the allegation in connection with the averments showing that the giving of such bond was a condition upon which the trustees, by their ordinance, made the grant of the franchise depend, it means no more than that the grantees accepted the franchise upon the only terms available. They consented to furnish the undertaking, but their consent was required in order to enable them to take any benefit under the grant.' Nor do we think the plea of estoppel available to plaintiff. The town had no power to impose the condition that the bidder should pay a per cent of his gross annual earnings. * * *" (pp. 196-7.)

"The town of St. Helena had no authority to require the grantee of a franchise to pay any part of the gross proceeds of the franchise as a condition to its enjoyment. 'There is here no reason for the application of the doctrine of estoppel.' (Foxen v. City of Santa Barbara, 166 Cal. 77, 83 (134 Pac. 1042, 1045).)"

Town of St. Helena v. Ewer (1914), 26 Cal. App. 191, 195-6-7.[8]

As the supreme court of California has pointed out, if the doctrine of estoppel were allowed in such cases municipal corporations "have only to induce persons to contract with them beyond the scope of their powers, and their very usurpations have the effect of conferring powers on them which the legislature has withheld. A proposition so erroneous can scarcely need argument to overturn it * * *." (*City of Arcata v. Green, supra,* 156 Cal. 759, 764.)

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[8]See also:

People v. Dean (1898), 122 Cal. 421, 423;

San Francisco-Oakland Terminal Rys. v. County of Alameda (1924), 66 Cal. App. 77, 81, 83.

The federal cases likewise support the proposition that if a city has no power to fix rates by contract, the provisions of a franchise ordinance purporting to do so are no bar to the court enjoining the enforcement of confiscatory rates.

Thus in *San Antonio v. San Antonio Public Service Co.* (1920), 255 U. S. 547, 556, counsel for the city, in resisting the suit for an injunction against the enforcement of the franchise rate brought by the public utility argued that "although no contract was possible under the constitutional restriction which would bind the city not to lower the rate, nevertheless there was a unilateral contract or condition resulting from the granting of the franchise which bound the railway company to the franchise rate, * * *" This Court dismissed this contention on two grounds, stating:

> "There is not the slightest suggestion of any attempt on the part of the parties consciously to produce such a condition. But besides, the error underlying the proposition is not far to seek. The duty of an owner of private property used for the public service to charge only a reasonable rate, and thus respect the authority of government to regulate in the public interest, and of government to regulate by fixing such a reasonable rate as will safeguard the rights of private ownership, are interdependent and reciprocal. Where, however, the right to contract exists and the parties, the public, on the one hand, and the private owner, on the other, do so contract, the law of the contract governs both the duty of the private owner and the governmental power to regulate. Were, therefore, as in the case supposed in the argument, the regulating power of government wholly uncontrolled by contract, it would follow that that power would be required to be exerted, and hence the supposed condition operat-

ing upon the private owner would be nugatory. Such a case really presents no question of a condition, since it resolves itself into a mere issue of the exrcise by government of its regulatory power."

San Antonio v. San Antonio Public Service Co. (1920), 255 U. S. 547, 556.

In *City of New Orleans v. O'Keefe* (1922, C. C. A. 5th), 280 Fed. 92, 94, the receiver for the utility was seeking an injunction in the federal courts against the enforcement of franchise fares. The municipality advanced the argument on appeal "that the maintenance of the rate of five cents was a condition to the grant, and continued use, of the franchises to occupy the streets." The court denied the proposition and the injunction was granted.

In *City and County of Denver v. Stenger* (1922, C. C. A. 8th), 277 Fed. 865, the city had attempted to set a franchise rate of five cents. The receiver of the railway filed a bill for an injunction in the Federal court against the enforcement of the franchise rates. In granting the injunction the court said that even if the language employed in the franchise had been contractual, it would be unilateral and unenforceable because of "lack of mutuality".

It is suggested in the briefs of appellants that a requirement that franchises be sold and bids accepted would indicate that the provision with respect to fares was a part of the bid or consideration for which the franchise was granted. The California supreme court has expressly negatived this contention in holding that the only element comprised within the term "bid" is the cash price paid to the grantor for the franchise.

Thus in *Thompson v. Board of Supervisors* (1896), 111 Cal. 553, 557-8, where, under the Franchise Act of 1893, the plaintiff bid for an electric railway franchise, agreeing to pay $25 and to furnish power and light, and give 2% of gross income. The county rejected his bid and he sought mandate claiming to be the highest bidder. In refusing the writ, the court said:

> "When the law says a franchise must be sold to the highest bidder, without stating other terms or conditions of sale, it means sold for cash. It does not contemplate that it may be bartered away for meats and produce to feed the inmates of the county infirmary, or traded off for horses to be used in the fire department of the municipality. The moment you give a construction to the law by which the officers selling may accept a consideration for the franchise in any other commodity than money, the whole purpose and object of the act becomes a nullity, * * *. It would thus seem that petitioner's offer to furnish power for the county infirmary, and erect clusters of electric lamps at twenty different points upon the road, cannot be considered; for the officers intrusted with the sale had no more right to accept such properties and benefits in consideration of the franchise than they had to accept horses, cattle, or sheep. We are also clear in holding that an agreement to pay a percentage of the gross receipts of the road, after completion and when in operation, cannot be received as a legal bid or tender under this act. As already suggested, when a statute provides that property shall be sold to the highest bidder, in the absence of anything in the statute to the contrary, it must be held to mean 'to the highest bidder for cash.'"
>
> "* * * the statute contemplates a cash sale, and a percentage of gross receipts is in no sense cash."

Thompson v. Board of Supervisors (1896), 111 Cal. 553, 557-8.

IV.

THE FARE PROVISIONS OF THESE FRANCHISES EVINCE AN INTENTION TO REGULATE, NOT TO CONTRACT.

Even in those cases where the undoubted power exists in a municipality to fix public utility rates by contract, the courts will closely scrutinize the language used in fixing the rates for the purpose of determining whether it was the clear intent of the city that such rates should remain unchanged throughout the period of the franchise, or should be subject to the further exercise of the police power of the city. In other words, whether it was the clear intent of the city to bind its future legislative bodies by contract regardless of changed conditions or whether its intention was merely to regulate the rates.

The record here shows [R. 387-397] that of the 102 franchises under which the Company operates on the streets of the city of Los Angeles,

Eighteen (18), designated in the record "Class A", contain the following fare provision:

> "The rate of fare to be charged under this franchise **shall not be more than five cents** for one continuous ride in the same general direction within the corporate limits of the city, except upon a showing before a competent authority having jurisdiction over rates of fare, that such greater charge is justified." [R. 367.]

Seventy-three (73), designated in the record "Class B", contain the following fare provision:

> "That the rate of fare for any distance over said road or its branches, one way, **shall not exceed five cents** for one passenger." [R. 387.]

Five (5), designated in the record "Class C", contain no fare provision. [R. 387.]

Three (3), designated in the record "Class D", contain the following fare provision:

> "That the rate of fare charged **shall not exceed two and one-half cents per mile for any distance; provided, however, that no fare need be less than five cents.** [R. 387.]

Two (2), designated in the record "Class E," contain the following fare provision:

> "That the rate of fare for passengers on said **railroad shall never exceed ten cents. The said Board of Supervisors reserving the right to establish at any time, a fare not exceeding ten cents, and not less than five cents."** [R. 388.]

One (1), designated in the record "Class F", contains the following fare provision:

> "That the rate of fare for passengers on said railroad **shall never exceed three cents per mile."** [R. 388.]

All of the above 102 franchises were granted subsequent to 1879, when section 21 of Article I of the state Constitution prohibiting the granting of special privileges or immunities, and section 11 of Article XI empowering cities to regulate rates, became effective. Of these 102 franchises a total of 22 composed of the 18 so-called "Class A" and 4 of the so-called "Class B" franchises were all granted by the city of Los Angeles subsequent to November 3, 1914, the date of the adoption of the present section 23 of Article XII of the Constitution, *supra,* expressly divesting all political subdivisions of the state of all powers over public utility rates.

In determining whether the above quoted fare provisions evince a clear intention upon the part of the grantors that both they and the grantee company shall be bound throughout the duration of the franchise by the rate therein fixed, we can only turn to the decisions of the courts of other jurisdictions in analogous cases for such language has never received judicial interpretation in California.

In *Rogers Park Water Co. v. Fergus* (1901), 180 U. S. 624, 629-630, the town of Rogers Park had granted franchises to the water company by ordinances. Section 12 of the ordinances provided:

> "The said grantee or assigns shall charge the following annual water rates to consumers of water during the existence of this franchise, * * *."

Then followed the rates for the particular purpose for which the water might be used. Then followed a provision that the

> "rates for all other purposes that may be applied for, not named in the foregoing schedule of maximum rates, will be fixed by estimation or meter at the option of the grantee or assigns."

This Court held that:

> "This, it will be observed, is the language of command, not of contract; of limitation on power, not of bargain-giving power. The right to charge the inhabitants of the village for the water supplied to them resulted from the right to construct and maintain the system. Section 12 was a regulation of the right. There is no stipulation that it will be the only instance of regulation; that the power to do so is bartered away; and that the conditions which determined and justified it in 1888 would remain standing, and continue to justify it through the

changes of thirty years. It would require clearer language to authorize us in so holding."

Rogers Park Water Co. v. Fergus (1901), 180 U. S. 624, 630.

In *City & County of Denver v. Stenger* (C. C. A. 8th, 1922), 277 Fed. 865, 867, 868, 870, the city of Denver had granted to the railway company by ordinances two rights-of-way and a franchise along certain streets. Each of the right-of-way ordinances provided, with slight variation in language, that **"the said company shall not be entitled to receive more than five cents for a single passage on any line of the said company's railway within this city,"** and the franchise ordinance limited the fare to **"five cents, and no more."** The Circuit Court of Appeals for the Eighth Circuit found that this language was not intended to be contractual and that if it was, it was unenforceable because it was unilateral and lacked mutuality.

In *Knoxville Water Co. v. Knoxville* (1903), 189 U. S. 434, 436, the city of Knoxville, by ordinance, granted to the Knoxville Water Company a franchise which provided that "said company will supply private consumers with water at a rate **not to exceed five cents** per 100 gallons." (The similarity in language to the franchises here is to be noted.) This Court said that, assuming that the charter of the city authorized it to contract, this did not amount to a contract, for it was among the undertakings of the company only, the city promising nothing. Therefore, an ordinance lowering the water rate was upheld both in the Tennessee courts and in this Court.

In *County of Stanislaus v. San Joaquin & Kings River Canal etc. Co.* (1904), 192 U. S. 201, 208, a franchise had been granted by the legislature of the state of California, 1862, providing therein that the rates to be charged by the water company should be subject to regulation by the Board of County Supervisors, but "shall not be reduced by the supervisors so low as to yield to the stockholders less than 1½ per cent per month upon the capital actually invested". Later, the legislature authorized the supervisors to fix rates to yield 6 per cent to 18 per cent upon the capital investment and the supervisors reduced the rates of the company so as to produce a yield of only 6 per cent. The company sought to enjoin the 6 per cent rate ordinance on the ground that it impaired its contract, but the bill was dismissed. This Court said:

> "In our belief, the language of the act of 1862 does not and was not intended to form a contract, but simply amounted to the statement of the then pleasure of the legislature, to so remain until subsequently altered by it."
>
> *County of Stanislaus v. San Joaquin & Kings River Canal etc. Co.* (1904), 192 U. S. 201, 208.

In the light of these decisions it would seem clear that by the use of the language contained in the Company's franchises the legislative bodies of the grantors did not intend or contemplate the bartering away of their reserve police power for the duration of the franchises, but rather that they had in mind and intended only the regulation of the charges and the preservation unto their succeeding legislative bodies of the continued right to regulate said charges.

It is to be noted, also, that of the 102 franchises under which the Company occupies the City's streets 25 were granted by the Board of Supervisors of Los Angeles County, and that of the 20 franchises stressed by the Commission as having been granted between 1905 and 1911 no less than 14 were granted by the county, and not by the City. [R. 396.]

V.

THE COMMISSION HAS TWICE EXERCISED JURISDICTION OVER THE COMPANY'S FRANCHISE FARE.

In the face of this total lack of power in the City to fix the Company's fare by contract, we submit that it is of no moment whether the court below may have erred in its view that the 1921 decision of the Commission increasing the 5¢ fare to 6¢ abrogated the franchise fare even though the 6¢ fare was never charged or collected. We do not concede that such view was erroneous but contend that, the City having no power to contract as to public utility rates, the 5¢ fare provisions of appellee's franchises are not and cannot be contract obligations, and that therefore it is immaterial, so far as the power and jurisdiction of a federal court to relieve confiscation is concerned, whether those fare provisions were or have been abrogated by the Commission, because the record shows that the Commission, being properly appealed to, and upon a clear showing of confiscation, has arbitrarily refused to authorize compensatory rates.

Our contentions below on this question were, as they now are, twofold: First, that even assuming the franchise fare provisions constitute contract obligations, the

Commission, by its decision No. 9029 in 1921, abrogated that obligation by finding the 5¢ fare inadequate and authorizing a 6¢ fare; and secondly, that, there being no power in the City to contract as to public utility rates, the 5¢ fare was not a contract obligation and consequently the Commission, by its decision No. 19521 in 1928, had exercised its complete jurisdiction over said fare and, by denying any increase, had deprived the Company of its rights under the federal Constitution. We first took this position in opposition to reasons (f) and (g) of the Commission's motion to dismiss [R. 243-4] and we now adhere to it. A careful analysis of the opinion of the court below clearly discloses that it too caught the distinction, for, after holding that none of the statutes cited to it by the appellants contained any grant of power to contract, that court said [R. 541-542 and 543]:

> "* * * No decisions of the Supreme Court of the state directly decide the question, and we pass it, merely saying that **we are inclined to the view that in the absence of an express grant to the city of power to fix binding rates in franchises, no such power exists: nor can it be implied under the language of the act of 1901, or other statutes called to our attention.** (Stanislaus County v. San Joaquin and K. R. Canal Co., 192 U. S. 200; City of San Antonio v. San Antonio Public Service Co., 255 U. S. 547; San Francisco Oakland Terminal Co v. City of Alameda, 226 Fed. 889; Knoxville Gas Co. v. City of Knoxville, 261 Fed. 283.) It is perfectly clear, we think, that at least since the adoption of the constitutional provision heretofore cited, any provision with respect to rates in franchises granted since 1914 could not be considered as binding contracts of inviolable nature. * * * [R. 541-2.]
>
> "We prefer to rest our decision upon the ground that **even upon the assumption** that the city had

power to fix the utility rate by contract and that the rate provisions contained in the franchises granted to plaintiff did constitute contracts, nevertheless, the rates specified in the provisions of the franchises **have been changed by the exercise of the police power of the state.** It appears that in 1921 the Commission granted plaintiff company authority to increase its rates over the basic five cent fare which was then in force. There were in force and effect at that time 102 out of 116 franchises granted to plaintiff or its predecessors. Since May, 1921, fourteen other franchises have been granted. When the Commission in 1921 made its order changing the basic five cent fare, it authorized plaintiff to file with the Commission and put into effect thirty days from the date of the order, a schedule of rates increasing the then present basic fare of five cents to six cents, and directed that tickets or token be put on sale. That plaintiff company did not avail itself of the right to the increase does not affect the fact that the Commission exercised its exclusive jurisdiction to regulate rates by making and finding that the rates provided for in the franchise granted to plaintiff were inadequate, and that the six cents fare authorized was a just rate. * * * [R. 542-3.]

"Furthermore, we are of the opinion that the proceeding before the Railroad Commission (No. 13323) out of which the present suit grew, must be held to have been **a complete exercise by the Commission** of its power over the rate specified in the franchises granted to plaintiff. How could it be otherwise? The Commission received and considered original and supplemental applications for an increase made by plaintiff. It carried on an extensive investigation lasting from November, 1926, until March, 1928, when it made its finding that the five cent fare allowed to plaintiff was not an unreasonable return, and that under that rate and the method of operation for the year ending December 31, 1927, the return was approximately 4.9 per cent. The finding of the Commission rested upon detailed figures concerning the valuation of plaintiff's prop-

erty. The practical result of the conclusion and order of the Commission was to prevent the company from obtaining a fair return upon its property invested in the public service. Its order was none the less effective in denying permission to raise an existing rate inasmuch as the necessary effect was to enforce the existing rate, which would effect confiscation of plaintiff's property. (Miss. R. R. v. M. & O. R. R., 244 U. S. 388.) [R. 543-4.]

"We, therefore, hold that the denial of permission to raise the existing rate, followed as it was and is by the necessary effect of enforcing the rate, was an exercise of jurisdiction and that a situation was created wherein the power of the federal court to enjoin, if confiscation is effected by the order, is ample. * * *" [R. 544.]

We still press the points.

(a) DECISION No. 9029 (1921).

When a state regulatory body, by its order, allows a fare other than that fixed in a franchise contract, the order permanently abrogates such franchise fare just as effectively " 'as if, after fixing the rates, there had been added therein the words 'and it is hereby directed that the rates provided in the franchise shall be and they are hereby terminated' or words of similar import.' " (*Denney v. Pac. Tel. & Tel. Co.* (1927), 276 U. S. 97, 103.) Consequently, even if the fare provisions of the Company's franchises did constitute contract obligations, they ceased to be such at the time of the signing and filing of the Commission's Decision No. 9029 on May 31, 1921.

The record here shows that in November, 1918, the Company applied to the Commission for an investigation of its service and financial conditions. After an extended investigation covering a period of almost 3 years, the

Commission handed down its Decision No. 9029[9] on May 31, 1921, in which, among other things, it found that:

> "If adequate street railway service is to be given in Los Angeles, there appears to be no possibility for the company to secure the necessary revenue under a continuation of the flat 5 cent fare. An increase in the fare in some form, we are satisfied, should be authorized if street railway service is not to suffer and great injury is not to result to the development of the city." [R. 170.]

and issued its order authorizing the Company to charge a 6 cent fare with 10 tokens or tickets for 50 cents. [R. 169.] The Commission's order in said decision provided as follows:

> "5. In the matter of rates.
>
> "That applicant is hereby authorized to file with the Commission and put into effect within thirty (30) days from the date of this order a schedule of rates increasing the present basic 5-cent fare to 6-cents, [R. 348] provided that tickets or tokens be put on sale at the company's offices, on the company's cars, and at such other points as the company may select, in blocks of ten (10) tickets or tokens at a total cost of 50 cents for each block; and provided further that the single 6 cent fare, as also the reduced rate ticket or token fare, shall retain transfer privileges as at present in existence. The reduced ticket or token fare shall be transferable and good at any time, but the company shall not be required to redeem unused tickets or tokens." (19 C. R. C. 1002.)

For the reasons stated in the complaint herein [R. 12] the Company never filed the 6 cent schedules and the 6

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[9]Opinions and Orders of the Railroad Commission of California, Vol. 19, p. 980 (19 C. R. C. 980). *Re* Los Angeles Railway Corporation (1921), P. U. R. 1922 A, 66.

Utilities Act of California (Stats. 1915, p. 115); a "showing before the Commission that such greater charge is justified" (Sec. 27); a determination of the just and sufficient fares and a fixing of the same by order (Sec. 32a); and "a showing before the Commission and a finding by the Commission that such increase is justified" (Sec. 63a).[10]

As was said in *Denney v. Pac. Tel. & Tel. Co.* (1927), 276 U. S. 97, 102:

> "**The department made its investigation and order without regard to the franchise rates and treated the questions presented as unaffected thereby.** It exercised the power and duty to fix reasonable and compensation rates irrespective of any previous municipal action. We must treat the result as a bona fide effort to comply with the local statute." (*Denney v. Pac. Tel. & Tel. Co.* (1927), 276 97, 102.

And the effective date of that decision and order was May 31, 1921, the date it was issued, and not as the Commission contends, thirty days later. The thirty day provision, as the order itself clearly shows, was simply the limit of time within which the Company might file its new schedules. The decision and order was effective May 31, 1921, and the 6¢ fare would have been charged and collected long before the expiration of 30 days therefrom had the Company not asked a rehearing. Under Sec. 66 of the Act, therefore, the decision and order was

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[10] Just how full and complete was this exercise of jurisdiction by the Commission will appear from the full text of said Decision No. 9029 in P. U. R. 1922A, 66. The order accompanying said decision is, however, not reported there.

cent fare was never charged or collected. On October 26, 1926, just prior to the filing of the Company's application for the present increase with the Commission, the Commission, at the request of the Company, dismissed said application of November, 1918, and revoked and set aside said Decision No. 9029.

Regardless of why said 6 cent fare was never charged or collected and regardless of the fact that said decision and order of the Commission was revoked and set aside some five years later at the request of the Company, here, we submit, was a full and complete exercise of jurisdiction by the Commission abrogating the 5 cent franchise fare. The moment that Decision No. 9029 had been filed by the Commission its jurisdiction had been completely exercised in so far as the adequacy and reasonableness of the 5 cent franchise fare was concerned. It had formally found the 5 cent fare to be inadequate and had in effect formally abrogated it in favor of a basic 6 cent fare. If any of the Company's franchises contained a contract restraining such increased fare, such restraint would have to be removed before the fares could become effective. But this restraint was removed by the decision and order of the Commission, for the Commission had done every act and made every order necessary to make effective a six cent fare, consequently its order must necessarily have abrogated any five-cent contract fares if they existed. No slightest additional act or step on the part of the Commission was necessary to put the 6 cent fare in effect but only the action of the Company in filing and posting its new 6 cent schedules.

Here, we submit, was a complete compliance by the Commission with all its requisite duties under the Public

in full force and effect until June 20th, when the petition for rehearing was filed. At the date of that decision the Company had in force and effect all but 13 of its present 102 franchises, and of the 13 granted since May 31, 1921, all except one is a so-called Class A franchise containing a limited 5¢ fare provision, and the excepted one is a so-called Class C franchise containing *no* fare provision. [R. 394-7.]

It thus appears that the unlimited 5¢ fare clause contained in all of the Company's so-called Class B franchises was effected by the Commission's said decision No. 9029, and that, whether said 5¢ fare provisions constituted binding contract obligations or not, they were abrogated and increased to 6 cents by said decision.

(b) DECISION No. 19521 (1928).

The action of the Commission in the proceeding which gives rise to the case at bar likewise constituted a complete exercise of jurisdiction by the Commission over the 5¢ fare.

In that proceeding the Commission received and entertained both the Company's application for a 7¢ fare and its interim application for a 6¢ fare; it conducted thereon an extensive and prolonged investigation extending over a period of almost a year; it had all the evidence under submission for approximately eight months, and never in the course of all that time nor at any stage of the proceeding was the question of a contract fare even suggested or mentioned, and finally in the face of a most convincing showing of confiscation the Commission found that although the 5¢ fare afforded the Company a return of only 4.9% it was not unreasonable, and denied the Company any relief.

The record here presents the unprecedented situation of a public utility whose property upon every theory and estimate of valuation in the record before the state regulatory agency is being confiscated by the compulsory collection of the 5¢ fare; a public utility which, following the only course available to it under the state law, has appealed for relief on no less than two occasions within the last three years to the one and only agency of the state authorized and empowered to grant it relief; whose repeated appeals to that agency have met with rebuff and a refusal of relief—**not on the ground that the 5 fare was a contract fare over which that agency had no jurisdiction**—but upon the sole ground that although according to its own figures such fare afforded a return of only 4.9%, it was not unreasonable, even though according to all of that agency's own figures the confiscation of that utility's property is, and for some years has been, apparent.

Section 32[11] of the Public Utilities Act of California expressly enjoins upon the Commission the duty to deter-

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[11]Sec. 32, Public Utilities Act of California. "(a) Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that the rates, fares, tolls, rentals, charges or classifications, or any of them, demanded, observed, charged or collected by any public utility for any service or product or commodity, or in connection therewith, including the rates or fares for excursion or commutation tickets, or that the rules, regulations, practices or contracts, or any of them, affecting such rates, fares, tolls, rentals, charges or classifications, or any of them, are unjust, unreasonable, discriminatory or preferential, or in anywise in violation of any provision of law, or that such rates, fares, tolls, rentals, charges or classifications are insufficient, the commission shall determine the just, reasonable or sufficient rates, fares, tolls, rentals, charges, classifications, rules, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order as hereinafter provided." (Stats. 1915, p. 132.)

mine just, reasonable and sufficient rates or fares, and to fix the same by order. Yet it is here argued by appellants that when the Commission, although properly and regularly appealed to, ignores that duty and refuses to fix just, reasonable and sufficient rates, the utility is without remedy and the federal courts are powerless to grant relief because, forsooth, the rate is alleged to be fixed by contract.

In the absence of any express grant of power to the City to contract away the regulatory powers of the state—and there is no such grant here—such an argument, we submit, cannot prevail in the light of the repeated declarations of this Court and of other federal courts in the following cases:

In *Mississippi R. R. Commission v. Mobile & Ohio R. R. Co.* (1917), 244 U. S. 388, 391-2, it was said:

> "This power of regulation, if it is exercised in such an arbitrary or unreasonable manner as to prevent the company from obtaining a fair return upon the property invested in the public service, passes beyond lawful bounds and is void, because repugnant to the due process of law provision of the Fourteenth Amendment to the Constitution of the United States. Atlantic Coast Line R. Co. v. North Carolina Corp. Commission, *supra;* Missouri P. R. Co. v. Nebraska, 217 U. S. 196, 54 L. ed. 727, 30 Sup. Ct. Rep. 461, 18 Ann. Cas. 989; Missouri P. R. Co. v. Tucker, 230 U. S. 340, 57 L. ed. 1507, 35 Sup. Ct. Rep. 961; Northern P. R. Co. v. North Dakota, 236 U. S. 585, 59 L. ed. 735, L. R. A. ....., ..., P. U. R. 1915C, 277, 35 Sup. Ct. Rep. 429, Ann. Cas. 1916A, 1.
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> "Whether a statute enacted by the Legislature of a state or an order passed by a railroad commission, exceeds the bounds which the law thus sets to such authority, is a question of law arising on the facts of each case (Mississippi R. Commission v. Illinois C. R. Co., 203 U. S. 335, 51 L. ed. 209, 27 Sup. Ct.

Rep. 90), and the appropriate remedy for determining that question is a bill in equity such as was filed in this case to enjoin its enforcement. *Ibid.;* Chicago, M. & St. P. R. Co. v. Wisconsin, 238 U. S. 491, 59 L. ed. 1423, L. R. A. 1916A, 1133, P. U. R. 1915D, 706, 35 Sup. Ct. Rep. 869."

Miss. R. R. Commission v. Mobile & Ohio R. R. Co. (1917), 244 U. S. 388, 391-2.

In *Northern Pac. Ry. Co. v. Dept. of Public Works of Wash.* (1925), 268 U. S. 39, 44-5, this Court held:

"But where rates found by a regulatory body to be compensatory are attacked as being confiscatory, courts may inquire into the method by which its conclusion was reached. An order based upon a finding made without evidence * * * or upon a finding made upon evidence which clearly does not support it * * * is an arbitrary act against which courts afford relief."

Northern Pac. Ry. Co. v. Dept. of Public Works of Wash. (1925), 268 U. S. 39, 44-5.

In *Smith v. Illinois Bell Telephone Co.* (1926), 270 U. S. 587, 591, it was held:

"Property may be as effectively taken by long continued and unreasonable delay in putting an end to confiscatory rates as by an express affirmance of them; * * *."

Smith v. Illinois Bell Tel. Co. (1926), 270 U. S. 587, 591.

In *Augusta-Aiken Ry. & Elect. Corp. v. Railroad Commission of So. Caro.* (C. C. A. 4th, 1922), 281 Fed. 977, 980, the Circuit Court of Appeals said:

"It is not the fixing but the enforcement of a confiscatory rate that invades the constitutional rights of the carrier. To deny permission to raise an

existing rate is in necessary effect to enforce that rate, and obviously confiscation may be as completely effected by refusing an increase as by requiring a reduction. It is therefore immaterial whether the rate be confiscatory when it is prescribed, or afterwards becomes so by reason of changed conditions. The practical result is the same in the one case as in the other, and it cannot be doubted that the power of the courts to enjoin confiscation effected by reduction is equally ample, and its exercise equally obligatory, to enjoin confiscation effected by refusal to permit an increase. And the Supreme Court has repeatedly so held. Columbus Ry. Power & Light Co. v. City of Columbus, 249 U. S. 399, 39 Sup. Ct. 349, 63 L. ed. 669, 6 A. L. R. 1648; Oklahoma Operating Co. v. Love, 252 U. S. 331, 40 Sup. Ct. 338, 64 L. ed. 596; San Antonio v. San Antonio Public Service Co., 255 U. S. 547, 41 Sup. Ct. 428, 65 L. ed. 777; Newton, Attorney General, v. Consolidated Gas Co., 258 U. S. ....., 42 Sup. Ct. 264, 66 L. ed. ....., * * *."

Augusta-Aiken Ry. & Elec. Corp. v. R. R. Comm. of So. Caro. (C. C. A. 4th 1922), 281 Fed. 977, 980.

In the face of the duty enjoined upon the Commission by section 32 of the Public Utilities Act to fix just, reasonable and sufficient rates, it cannot, in view of the above quoted decisions of this Court, be successfully argued that the court below erred in affording relief to the Company from the continued violation of its rights under the federal Constitution.

Appellants argue, however, that, if the Company's franchise fare provisions constitute contract obligations, its right to an abrogation of such fare by the Commission is solely a statutory one under the public utilities act of California and that upon refusal of the Commission

to change the alleged contract fare the Company's only remedy was to seek a review of the Commission's refusal in the state supreme court under section 67 of the act. Wholly aside from the inconsistency of such a position when taken by a state regulatory agency which is charged under the state law with the express duty of fixing just, reasonable and sufficient rates, whether they have been fixed by contract or otherwise (Sec. 32a, *supra*), and which has ignored the evidence before it and has arbitrarily refused to increase said fare, not on the ground it had no jurisdiction, but solely on the ground the fare was reasonable, the fundamental error in such argument lies in the fact that it totally ignores the due process and equal protection rights guaranteed by the Fourteenth Amendment of the federal Constitution. As said by this Court in *Interstate Commerce Comm. v. Louis. & Nash. R. R. Co.* (1913), 227 U. S. 88, 91:

> "But the statute here gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. **A finding without evidence is arbitrary and baseless.** And if the government's contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our government. **It would mean that, where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority, however beneficiently exercised in one case, can be injuriously exerted in another, is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power.**"
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> *Interstate Commerce Comm. v. Louis. & Nash. R. R. Co.* (1913), 227 U. S. 88, 91.

Moreover, the review by the state supreme court under section 67 of the act affords no possible remedy for such an arbitrary order as was made by the Commission here. To seek it would be idle and futile, for section 67 of the act provides in part as follows:

> "* * * The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the constitution of the United States or of the state of California. **The findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review; such questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination.** * * * Upon the hearing the supreme court shall enter judgment either affirming or setting aside the order or decision of the commission. * * *" Sec. 67 Public Utilities Act, Stats. 1915, p. 115, 161.)

The state supreme court, in *Pacific Tel. & Tel. Co. v. Eshleman* (1913), 166 Cal. 640, 689, 701-2, construed this section by saying:

> "We may now sum up our conclusions as follows: * * * (5) That therefore the reasonableness of the railroad commission's orders and decrees may not be inquired into by any court of this state and consequently is of federal cognizance only." (p. 689. Per Henshaw, J.; Lorigan, J.; Melvin, J., concurring.)
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> "The conclusions reached may be summarized as follows: (2) Upon a writ of *certiorari* against the railroad commission this court must inquire whether the railroad commission has acted within its jurisdiction, and if this inquiry be answered affirmatively, the proceeding must be dismissed. * * *

(4) Where the commission has acted within the powers conferred upon it by the legislature, the only recourse of one affected by its action is to the guaranties of the federal constitution. And in cases where the violation of the right guaranteed by the federal constitution does not involve an excess of the jurisdiction of the railroad commission, the federal courts are the only ones in which he may assert his rights under those guaranties."

Pacific Tel. & Tel. Co. v. Eshleman (1913), 166 Cal. 640, 689, 702.

Obviously, then, such *certiorari* could avail this Company nothing for, regardless of how arbitrary the Commission's order was and is, it found the 5¢ fare not unreasonable and the state supreme court could not disturb that finding. Here, we submit, is no mere violation of a statutory right but a direct denial both of due process and equal protection which this Court will not permit (Mississippi R. R. Com. v. Mobile & Ohio R. R. Co. (1917), 244 U. S. 388; Northern Pacific Ry. Co. v. Dept. Public Works (1925), 268 U. S. 39; Smith v. Illinois Bell Telephone Co. (1926), 270 U. S. 587).

That the decision and order of the Commission here was arbitrary is conclusively shown by the following analysis of the evidence before it.

VI.

CONFISCATION.

The record here is unique in that the evidence of all parties to the proceeding before the Commission, including the Company's, the City's and the Commission's itself, as well as the findings of fact in the Commis-

sion's decision complained of, and the evidence before the District Court clearly shows, as the trial court has found, that the Company's property is being confiscated. **In fact not a single witness for any party to the proceeding before the Commission testified other than to the fact that under the 5¢ fare the Company's system was earning a return of less than 5% on any theory of valuation.**

Since practically all of the Company's evidence before the Commission and the District Court on the subject of confiscation was based upon Company valuation and rate base figures in excess of $42,000,000 and since we have stipulated that for the purpose of an injunction we will accept the Commission's rate base of $42,000,000, we will in this argument confine our demonstration of the existence of confiscation largely to the evidence introduced before the Commission by the Commission's engineers and by the City. The Company's evidence on confiscation will be referred to only where it is based on the $42,000,000 rate base, and, to be conclusive, we will demonstrate from the record the existence of confiscation, first, on the rail lines, secondly, on the bus lines, and lastly on the combined rail and bus lines, *i. e.*, the unified system.

Rail Lines.

John E. Cooper, Assistant Transportation Engineer of the Commission, prepared and introduced in evidence before the Commission Exhibit 63 [R. 453-466, 492]. Page 29 of said Exhibit 63 is an "Estimate of Financial Results of Operation, Year 1927", segregated as to rail and bus lines [see folio page 451, between R. 464 and

465] and shows that on the Commission's undepreciated historical reproduction cost appraisal estimate for said **rail** lines the return for 1927 was 5.5%, that on the Commission's historical reproduction cost less depreciation estimate for said **rail** lines the return for 1927 was 5.6%, and that on the Commission's reproduction cost new less depreciation estimate for said **rail** lines the return for 1927 was 3.3%. Said Exhibit 63 also shows on said page 29 that increases in gross revenue are required by the Company on the Commission's said various **rail** line estimates as follows:

Increase in gross Revenue necessary to net a	H.R.C.	H.R.C.L.D.	R.C.N.L.D.
6% return	$ 407,340	$231,306	$1,154,115
7% "	913,454	598,395	1,593,080
8% "	1,408,732	963,270	2,032,198

Said Exhibit 63 on page 29 thereof also shows the Commission's 1927 appraisal estimates for the **rail** lines as follows:

H.R.C.	H.R.C.L.D.	R.C.N.L.D.
$40,121,113	$29,795,740	$36,009,325

Applying to these figures the Company's estimate of **rail** operating income for 1927 of $1,580,650, as shown in Company's Exhibit 21 before the Commission [R. 442], reveals a return on said **rail** lines of only 3.9%, 5.3% and 4.3% respectively for the year 1927. Subsequent to the introduction of said Exhibit 21 before the Commission a revised estimate of the results of operations for 1927 under the 5¢ fare was introduced by the Company and designated Exhibit 45-A [R. 446]. This

exhibit was a revision of the former estimate in the light of the facts which had occurred during the interim [R. 477], and in it the operating **rail** income for 1927 is estimated at $1,286,083, which when applied to the three Commission appraisal estimates for **rail** lines above shown, reveal a return of 3.2%, 4.3% and 3.5% respectively on such bases.[12]

In the light of the uncontradicted testimony of Company witness Sachse [R. 325, 440, 474 and 475, 481] and of City witness Wilcox [R. 451, 485] that the cost of money to the Company was not less than 6%, and the testimony of said Wilcox [R. 451, 485] and of the Commission's chief engineer Mott [R. 497, 502], that the Company was entitled to a return of not less than 7%, it would appear that the Company's rail properties devoted to the public use are being confiscated beyond any question.

Bus Lines.

All evidence before the Commission and the District Court concerning the Company's **bus** lines is that they are operated at a loss. No one contends otherwise. Indeed, page 29 of Commission's Exhibit 63 [folio p. 451, between R. 464 and 465] shows that upon all theories of valuation the Company's bus lines, with one exception, are operated not only without any return whatsoever, but at a direct out of pocket loss. The one exception is a return of 0.2% on the Company's share of Los An-

[12]The foregoing are the only figures in the record showing separately for any year both the **rail** operating income and a **rail** rate base.

geles Motor Coach Company, its jointly owned and operated bus line [R. 439].

COMBINED RAIL AND BUS LINES.

The confiscation existing on the rail and bus lines is shown separately above for the purpose of meeting certain of appellant's assignments of error to the effect that by the decree the Company's street car patrons are compelled to make up deficits accruing from its bus operations. In this connection it is here again pointed out that not only was it stipulated [R. 521] before the District Court that the Company's system was a unified one and was so considered by the Commission, but the record shows [R. 436-9] that the rates proposed in Exhibit G to the bill of complaint and put into effect under the injunction include the identical increases on all bus lines for which increases were asked before the Commission, except only such bus lines as were added, extended or discontinued between the submission of the Company's application to the Commission in August, 1927, and the filing of its bill of complaint in June, 1928. In other words, with the exception noted, the bus fares proposed to be raised in Exhibit G of the bill of complaint are identically the same as those requested to be raised before the Commission and they include **all** of the Company's bus lines except two, where the fare is 10¢, and five which are operated jointly by the Company and the Pacific Electric Railway and which could only be increased on a joint request [R. 439].

Obviously, since as above shown, confiscation exists in reference both to the Company's rail and bus lines, it

must also exist in reference to the combined facilities. But let us demonstrate from the record.

We have previously stated that there was not a single witness **for any party** to the Company's proceeding before the Commission but whose testimony and evidence showed that under the 5¢ fare a return of less than 5% was being earned on the Company's system on any estimate of value in the record. The Company's testimony and evidence before the Commission were of course based upon valuation and rate base figures greatly in excess of the Commission's rate base of $42,000,000, and its operating expense figures were all predicated upon a straight line depreciation figure in accordance with the method it has always employed in depreciating its properties. Naturally such testimony and evidence showed less operating income and a less return than the Commission's and the City's evidence,[13] so this demonstration will likewise be confined largely to the Commission engineer's and the City's testimony and evidence before the Commission.

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[13]The Company's property has always been depreciated straight line. All its operating studies and estimates before the Commission accordingly include a straight line depreciation allowance, and its showing of inadequacy of rates and of confiscation before the Commission and the court was based on a reproduction cost new less depreciation rate base. The Commission on the other hand adopted the undepreciated historical cost rate base and applied a 5% annuity depreciation allowance in operating expense. Although the Company has stipulated that for the purpose of an injunction it accepts the $42,000,000 rate base it is not to be understood that it concedes the correctness or the accuracy of any of the Commission's operating estimates.

Exhibit 49 [R. 450-1] prepared and introduced in evidence before the Commission by T. G. Hughes, special accountant for the Commission [R. 490], after an examination of the accounting records of the Company including the operating revenue and expense account, shows on page D-1 [folio page 442a-3 between R. 450 and 451] as follows:

	1925	1926
Profit (subject to reasonableness of depreciation) available for return on investment	$ 1,539,048	$ 1,291,960
Investment on basis of 1913 appraisal plus net additions but exclusive of materials and supplies and working capital	38,958,898	39,830,586
Rate of Return	3.95	3.24

In reference to this exhibit Mr. Hughes testified [R. 451] that such returns would be reduced had the amount invested included a sum representing materials and supplies and working capital, and that his figures were subject to the reasonableness of the depreciation [R. 491]. It is to be noted that the 1926 figure of $1,291,960 designated as profit available for return on investment compares favorably with the 1926 **actual** income figure of $1,281,598 shown in Company's Exhibit 35 before the Commission [R. 446].

In Exhibit 53 [R. 451-2], prepared and introduced in evidence before the Commission by Delos F. Wilcox, rate expert for the City [R. 485-90], the witness testified that in his opinion the depreciated historical reproduction cost of the Company's properties was a full and liberal measure of fair value for rate making purposes and that, hence, the rate base should not exceed

$31,000,000 [R. 451]; that the gross income of the Company available for return on the investment in 1926 was $1,283,598 or $886,402 less than a 7% return of $2,170,000, to which in his opinion the Company was entitled on his $31,000,000 estimate [R. 452]. His concluding statement is—

> "To provide for both the gross receipts tax and the Federal income tax chargeable to operation, it will be necessary to increase gross revenues in excess of $1,000,000 in order to produce the $886,402 additional income required." [R. 452-3.]

Here is a witness, absolutely disinterested so far as the Company and the Commission are concerned, whose testimony shows that even on a valuation estimate of only $31,000,000 the Company earned a return of less than 4.2% in 1926 or over $1,000,000 short of a return of 7% on that low figure. If his 1926 gross income figure of $1,283,598 is applied to the Commission's rate base of $42,000,000 it shows a bare 3% return. Here again, the witness' gross income figure of $1,283,598 for 1926 is entirely comparable to the 1926 **actual** operating income figure of $1,281,298 shown in Company's Exhibit 35 before the Commission [R. 446].

Commssion's Exhibit 63 [R. 453 to 466,][14] prepared and introduced in evidence before the Commission by John E. Cooper, assistant engineer of the Commission, shows the appraisal estimates of the Company's operative property by the Commission engineers as follows [R. 457]:

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[14]It will be noted from this exhibit that the bus lines were included by the Commission and that the $42,000,000 rate base found by the Commission in its Decision No. 19521 is simply the rounded off historical reproduction cost figure of the Commission engineers.

OPERATIVE PROPERTY—LOS ANGELES RAILWAY.

	H.R.C.	H.R.C.L.D.	R.C.N.	R.C.N.L.D.
Value of operative property as of Dec. 31, 1926, adjusted for new bus depreciation	$40,900,951	$30,080,770	$53,040,648	$36,313,470
Materials and supplies to be used in operation or to be scrapped	328,081	328,081	328,081	328,081
Total	$41,229,032	$30,408,851	$53,368,729	$36,641,551
Work in progress	256,959	275,959	244,959	271,959
Materials and supplies to be used in new construction	428,061	428,061	428,061	428,061
Total	$41,914,052	$31,112,871	$54,041,749	$37,341,571

Page 29 of said Commission's Exhibit 63 [folio p. 451 between R. 464 and 465] is an estimate by said Commission engineer Cooper of the financial results of operation for the year 1927 on the above Commission appraisals. The pertinent figures from said page 29 of said Exhibit 63 are summarized by Cooper [R. 453] as follows:

ESTIMATE OF FINANCIAL RESULTS OF OPERATION, YEAR 1927.

	Based on H.R.C. 5% sinking fund annuity depr.	Based on H.R.C.L.D. straight-line annuity depr.	Based on R.C.N.L.D. straight-line annuity depr.
Net Income	$2,070,261	$1,492,553	$1,036,379
Return in per cent	4.9%	4.8%	2.8%
Increase required to earn			
6%	715,840	502,820	1,414,982
7%	1,227,245	882,427	1,870,596
8%	1,738,650	1,262,052	2,326,211

There is also in said Exhibit 63 a table [R. 458] showing said witness' estimate of the net income and approximate return by years under both the straight-line and the 5% annuity methods of computing depreciation. This table reveals that under straight-line depreciation, the method that has always been used by the Company [R. 492], the Company's system even on the Commission's own appraisal figures earned a return of only 3.8% in 1925 and of only 3.1% in 1926; and that under the 5% annuity depreciation, the method used by the Commission in its Decision No. 19521, the system earned on the Commission's same figures a return of only 5.2% in 1925 and 4.6% in 1926.

This Exhibit 63 of Commission engineer Cooper is most significant on the question of confiscation in the light of his testimony [R. 491] that he has been in the transportation division of the Commission almost continuously since 1919, that he has a very good knowledge of the general system of this Company and has been familiar with the property in the neighborhood of five years and very intimately familiar in the last three years. Said Exhibit 63, we submit, is conclusive upon the question of confiscation for it appears from it that even upon all the Commission's own figures the Company's system has not earned a fair return since the year 1924 [R. 458].

Adopting the figures above set forth from said Commission's Exhibit 63, the Commission's chief engineer Mott prepared and offered in evidence before the Commission Exhibit 64 [R. 466 to 471, 496], in which he states [R. 468 and 497] that the 7% return figure of

$1,227,245, shown in said Exhibit 63 [R. 453] and again set forth in said Exhibit 64 [R. 467 and 468] has been used by him as indicative of the present reasonable requirements of the Company and that the present fare produces inadequate revenue [R. 498].

And in addition to this avalanche of testimony from the Commission and the City, comes the formal finding of fact of the Commission itself in the decision complained of that on its own rate base of $42,000,000 the Company earned a return of only 4.9% for the year ending December 31st, 1927 [R. 165, 167].

To all of which may be added the following evidence before the District Court, viz.:

From the affidavit of George J. Kuhrts, president and general manager of the Company, the statement that the confiscation of the Company's property had been taking place for more than two years past on the average over such period of not less than $7,000 per day [R. 315];

From the affidavit of Richard Sachse, consulting engineer of the Company, the following table D [R. 330]:

TABLE D.

Financial Results From Operation of Plaintiff's Property Under Present Rates in 1927—Actual and as Shown by Commission in Its Decision 19521.

	Item	Assumed & estimated by Commission in decision 19521	On basis of: Actual curtailed operating expenses & depreciation	On basis of: Normal operating expenses & depreciation
(a)	Total operating revenues	$13,254,000	$13,287,501	$13,287,501
(b)	Total operating expenses including depreciation and taxes	11,183,739	11,876,360	12,264,397
(c)	Net income available for return	2,070,261	1,411,141	1,023,104
(d)	Commission's rate base	42,000,000	42,000,000	42,000,000
(e)	Rate of return on (d)	4.93%	3.36%	2.43%
(f)	8% return on (d)	3,360,000	3,360,000	3,360,000
(g)	Deficiency in earnings below 8% on (d)	1,289,739	1,948,859	2,336,896

and the affiant's explanatory statements in reference to said table D [R. 328-9].

It appears, therefore, that upon appellant's own evidence before the Commission and the court, and upon the face of the Commission's own decision,—the Company's property is being confiscated at a rate of from $1,218 to $1,579 per day based on the following figures from the record:

On page 467 of the record is found the estimate introduced in evidence before the Commission by the Commission's chief engineer, A. G. Mott, upon the financial results of the Company's operations for the year 1927 under the 5¢ fare. It shows that upon the historical reproduction cost estimate of $41,914,052 of the Commission's said engineer the Company would earn only 4.9%, and that upon such estimate the Company needed additional gross revenue of $715,840 to earn a 6% return, $1,227,245 to earn a 7% return and $1,738,650 to earn an 8% return. Even assuming that a 6% return is adequate (which the courts have repeatedly refused to hold, and which the Company denies), and even for the moment accepting as correct the 5% sinking fund depreciation figures of said estimate, the fact still remains that on the Commission's engineer's said figures the Company is being deprived of a fair return on the value of its property by no less than $1,218 per day.

At page 451 of the record herein appears the report received in evidence by the Commission from Delos F. Wilcox, rate expert for the City of Los Angeles. It shows that on his rate base estimate of $31,000,000 the Company's gross income for 1926 was $886,402 **less**

than a return of 7%. This is $576,402 less than a return of 6% or a daily confiscation, even on the 6% basis, of $1,579.

On page 167 of the record appears the finding of fact of the Commission that the value of the Company's property is $42,000,000 and that the rate of return earned thereon by the Company in 1927 was 4.9%, and that the Company's net income available for return on said value in 1927 was $2,070,261. Assuming for the purpose of argument that all these figures are correct, and again assuming that a return of only 6% is adequate, the Commission's own findings of fact in said decision show a daily confiscation of the Company's property in 1927 in the sum of $1,232.

To summarize then, according to appellant's own evidence before the Commission and according to the Commission's own findings of fact,—even assuming 6% to be a fair return—

(1) If the Company's property devoted to public use is of the value of $31,000,000, the City of Los Angeles engineer's estimate of historical reproduction cost, the Company is receiving thereon $1,579 per day less than 6%, or a return of less than 4½% [R. 451];

(2) If the Company's property devoted to the public use is of the value of $41,914,052, the Commission engineer's estimate of the historical reproduction cost, the Company is receiving thereon $1,218 per day less than 6%, or a return of approximately 4.9% [R. 467]; and

(3) If the Company's property devoted to the public use is worth $42,000,000, the Commission's finding of

value in Decision No. 19521, the Company is receiving thereon, according to the Commission's finding of net income available for return, $1,232 per day less than 6%, or a return of approximately 4.9% [R. 167].

The record is clear, therefore, that upon the evidence of all the witnesses, both for the Commission and the City, in the proceeding before the Commission, and upon the Commission's own findings of fact in said Decision No. 19521, the Company is receiving a return of less than 5% on the value of its property devoted to the public use. This situation, we submit, cannot lawfully be permitted to exist in view of the holding of this Court in the case of *Ohio Utilities Co. v. Public Utilities Commission* (1925), 267 U. S. 359, 364, where it is said:

> " * * leaving a balance as return to the company of $7,566.15, or less than 5 per cent upon the value of the property. That this is so plainly inadequate as to result in depriving the company of its property without due process of law may not be doubted. See Bluefield Waterworks & Improv. Co. v. Public Serv. Commission, 262 U. S. 679, 692-695, 67 L. ed. 1176, 1182-1184, 43 Sup. Ct. Rep. 675, and cases cited; Missouri *ex rel.* Southwestern Bell Teleph. Co. v. Public Serv. Commission, 262 U. S. 276, 288, 67 L. ed. 981, 985, 31 A. L. R. 807, 43 Sup. Ct. Rep. 544.
>
> *Ohio Utilities Co. v. Public Utilities Commission* (1925), 267 U. S. 359, 364.

ECONOMIES IN OPERATION.

This drastic and uncontrovertible confiscation is attempted to be justified by the Commission in the decision complained of and in its showing before the District

Court on the alleged ground that certain economies in operation might be put into effect on the Company's system which would enable it to earn a fair return on the Commission's rate base. Said decision of the Commission makes no mention of the economies in operation it refers to but the record before the Commission discloses that such reference must have been to one-man car operation and to the establishment of an inner-neutral zone.

One-man Cars:

Two days before the final submission of the Company's application to the Commission for increased fare, the Commission's chief engineer, A. G. Mott, testified [R. 500-1, 504-5, 515-17] that in his opinion the operating expenses of the Company could be materially reduced by the adoption of one-man operated cars upon the entire system. He admitted [R. 500] that to convert the Company's present two-man operated cars into one-man cars would cost approximately $1,500,000 and that then the plan would result in an increase of only $723,000 in net income [R. 469] and stated on cross-examination as follows:

> "On the question of whether this matter has been given sufficient consideration by me and my assistants, and whether it has been sufficiently discussed with the company to justify me in making definite recommendation, **I first want to say that I have not definitely recommended any precise thing.** I certainly think the Company should use its best constructive effort in working out the details of any plan which would be most effective to the total good of the situation, having in mind both company aspects of it and the public aspects of it." [R. 516.]

In addition to the above admission of the witness that he was not recommending any precise thing, his testimony reveals that the annual increase of $723,000 which he testified would result from the 100% use of one-man cars is still short some $504,245 of a return of 7% on his historical rate base figure [R. 467, 501], the return he himself has used as the one to which the Company is entitled [R. 502]. Moreover, the entire testimony of this witness on the subject of one-man cars and the results which in his opinion would follow therefrom—and his was the only testimony in favor of such a plan—was vigorously controverted by the Company's witnesses both in the record before the Commission and in the record before the Court [R. 470, 507-8, 512, 513-14, 315-16], the witness Weeks testifying [R. 508] that it would take from eight months to a year for the Company to convert its cars for one-man use and that then the saving would only be $561,630, which is some $665,000 short of the $1,227,245 increase in gross revenue which the Commission witnesses Mott and Cooper testified [R. 467] is necessary to return the Company the 7% which said Mott used as the return to which the Company is entitled [R. 502]; and the president and general manager, Kuhrts, testifying by affidavit before the court [R. 316] that 100% one-man car operations in the City of Los Angeles under the extreme conditions of traffic and congestion existing in said City would be inexcusably poor management, would be impracticable and unworkable and in entire opposition to the desires and wishes of the public served by the Company and of the authorities of the City of Los Angeles.

Even though the Company was given no opportunity to experiment with such a plan if it had been willing to do so, and even though the Commission's decision did not order the Company to adopt such a plan, the complete and full answer to this alleged justification of confiscation is, as the Commission well knows, that jurisdiction to order into effect such a drastic change in the type of service rendered on the Company's system vests not in the Commission alone, but also in the City. The Commission could not order such a change without the consent and approval of the City [R. 510-21],[15] and the Company could not inaugurate such a change without the approval of both. The record before the Court shows [R. 316] that the City not only never approved nor consented to the Commission's chief engineer's suggestion of one-man car operation, but formally and officially opposed and condemned it.

Inner-neutral Zone:

At the same time that the Commission's chief engineer suggested the one-man car plan he also suggested as a means of increasing revenue with the retention of the 5¢ fare, that the Company establish an "inner-neutral zone" [R. 499], altho he admitted [R. 503]

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[15]Under Sec. 23, Article XII of the Constitution of California the City of Los Angeles has never surrendered to the Railroad Commission any of its powers (other than the fixing of rates) of exercising local, police, sanitary and other regulations over public utilities. (See pp. 30-31, ante.)

See:

City of Los Angeles v. Central Trust Co. of N. Y. (1916), 173 Cal. 323;

Civic Center Assn. v. Railroad Commission (1917), 175 Cal. 441.

that he knew of no system anywhere where such a zone exists. All of his testimony on this plan was controverted by the testimony of the Company's witness Weeks [R. 506] to the effect that such a plan would be impractical, would cause confusion to the public, would slow up schedules and would be the cause of complaint arising from disputes and misunderstandings, and by the testimony of the Company's superintendent of operations, Hill [R. 511-12], that such a zone plan would be extremely difficult to handle, would result in confusion and dissatisfaction, and would slow up movement in the congested district.

As in the case of the one-man car plan, this "inner-neutral zone" suggestion is completely answered by the fact that the Commission's decision did not order the Company to put it into effect and, for the reasons heretofore given, it could not as a matter of law so order without the consent of the City, and nowhere in the record does such consent appear.

A further, full and complete answer to the contentions of the Commission concerning this one-man car plan and this inner-neutral zone plan is that the record before the Commission, which was in its entirety in the record before the trial court, presents a substantial conflict in the evidence upon these two matters and the trial court has resolved that conflict in favor of the Company. Under the long established and oft repeated rule of this Court the finding of the trial court on such a conflict of evidence will not be disturbed on appeal unless shown to be clearly erroneous. There is no such showing here.

Past and Future Returns.

In finding of fact No. 3 in the decision complained of [R. 167] and in the concurring opinion of one of the members of the Commission thereto [R. 170-171] and in the Commission's showing before the District Court [R. 354, 355, 357] the confiscation of Company's property under the 5¢ fare is attempted to be justified on the ground that the Company's average rate of return for the 5 year period from 1922 to 1926, inclusive, was 7.1% and for the 14 year period from 1913 to 1926, inclusive, was 6.1%. The Company does not concede the correctness of any of the net income and per cent return figures contained either in said decision, in said concurring opinion or in Commission's said affidavit before the District Court and contends that each of said yearly net income figures have been arbitrarily increased by the Commission above the respective **actual** net income for said years,—but assuming solely for the purpose of this showing that such figures are correct, both said concurring opinion and said evidence [affidavit of Cooper, R. 354 and 355] before the District Court conclusively show that, **even on such arbitrarily increased figures, the** Company earned a return under the 5¢ fare of only 5.2% in 1925, and 4.6% in 1926. And under the finding of fact No. 4 contained in the Commission's decision [R. 167] the return for 1927 was only 4.9%. In other words, accepting for this purpose the Commission's own rate base figures and its own figures of net income and rate of return, the Commission's own evidence shows that for every year since 1924 the Company has earned less than 5½% under the 5¢ fare.

The tables in said concurring opinion and in said affidavit to the District Court purporting to show that the Company earned 9.7% in 1922 and 9.4% in 1923 cannot, we submit, even if true, have the slightest bearing on its constitutional right to a fair return at the time of the inquiry. If the returns for those two years were excessive, as the Commission's said tables purport to show, it is presumed they were acquired lawfully and with the consent of the Commission, and neither that body nor any other, under the law, can now justify present confiscatory rates on the ground that five or six years ago they afforded the Company a fair return. As said in *Newton v. Consolidated Gas Co.* (1922), 258 U. S. 165, 175:

> "Since 1907 the Gas Company has been subject to supervision by a commission empowered to prohibit unreasonable rates, and the presumption is that any profits from its business were lawfully acquired. Municipal Gas. Co. v. Public Service Commission, 225 N. Y. 89, 99, P. U. R. 1919C, 364, 121 N. E. 772. Mere past success could not support a demand that it continue to operate indefinitely at a loss. The public has no such right in respect of private property, although dedicated to public use. When it became clear that the prescribed rate had yielded no fair return for more than a year, and that this condition would almost certainly continue for many months, the company was clearly entitled to relief."
>
> *Newton v. Consolidated Gas Co.* (1922), 258 U. S. 165, 175.

And in *Board of Public Utility Commissioners v. New York Telephone Company* (1926), 271 U. S. 23, 32, this Court said:

> "Past losses cannot be used to enhance the value of the property or to support a claim that rates for the future are confiscatory. Galveston Electric Co. v. Galveston, 258 U. S. 388, 395, 66 L. ed. 678,

692, 42 Sup. Ct. Rep. 351; Georgia R. & Power Co. v. Railroad Commission, 262 U. S. 625, 632, 67 L. ed. 1144, 1148, 43 Sup. Ct. Rep. 680. And the law does not require the company to give up for the benefit of future subscribers any part of its accumulations from past operations. Profits of the past cannot be used to sustain confiscatory rates for the future. Newton v. Consolidated Gas Co., 258 U. S. 165, 175, 66 L. ed. 538, 547, 42 Sup. Ct. Rep. 264; Galveston Electric Co. v. Galveston, *supra*, 396 (66 L. ed. 683, 42 Sup. Ct. Rep. 351); Monroe Gaslight & Fuel Co. v. Michigan Pub. Utilities Commission (D. C.), 292 Fed. 139, 147; Minneapolis v. Rand (C. C. A. 8th), 285 Fed. 818, 823; Georgia R. & Power Co. v. Railroad Commission (D. C.), 278 Fed. 242, 247, affirmed in 262 U. S. 625, 67 L. ed. 1144, 43 Sup. Ct. Rep. 680; Chicago R. Co. v. Illinois Commerce Commission (D. C.), P. U. R. 1922C, 282, 277 Fed. 970, 980; Garden City v. Garden City Teleph. Light & Mfg. Co., 150 C. C. A. 25, P. U. R. 1917B, 779, 236 Fed. 693, 696."

Board of Pub. Ut. Comm. v. N. Y. Tel. Co. (1926), 271 U. S. 23, 32.

In its showing before the District Court the Commission also sought to justify the confiscation of the Company's property on the theory that the Company will, over a reasonable period of time in the future, earn a fair return under the 5¢ fare. This at best is a mere prognostication which finds no conceivable support in the record, but is claimed to be supported by the affidavit of F. E. Ball, valuation and rate engineer of the City, filed by the City before the District Court [R. 382 to 385]. The graphs attached to said affidavit [Exhibits 1 and 2 between R. 384 and 385] indicate that altho in the City of Los Angeles there has been a steady gradual increase since 1924 to and including 1927 in real estate transfers, bank clearings, post office business, number of telephones, number of active gas meters and number of car miles

operated by the Company, there has also been during said period practically no increase in population except during the year 1926, a marked steady decline in the value of building permits, practically no increase in number of passengers carried by the Company, and an almost steady gradual decrease, based on the figures above referred to from the concurring opinion of one of the Commissioners, in the Company's net income. From these graphs the witness concludes that "all indications point to factors favoring an upward trend, **if any change is to be experienced**" [R. 385] and states:

> "Since the trend of net financial income of plaintiff as based on information above mentioned, has in the past followed the trend or cycle of general Los Angeles business conditions, affiant believes that it is not without the bounds of sound logic to assume that such will be the case in the future and with predominant influence indicating a decided upward trend in general business and prosperity cycles in Los Angeles during the **latter half of the next five year period,** and with no indications of less than a substantial normal progress during the first half of said period, it follows that the plaintiff's average net income **probably** will constitute during that period a just, fair and compensatory return on the average value of its transportation system devoted to the public service."

We submit that this affidavit and the conclusions of the witness therein stated are of no evidentiary value whatever in that they are too utterly remote and speculative upon which to compel the Company to endure the continued established confiscation of its property under the 5¢ fare. How long, it might be asked, must the Company await the arrival of this day of plentitude. It has waited now in vain since 1924. Must it then

continue to wait until "the latter half of the next five year period" in the hope that "if any change is to be experienced" it will be an upward trend. This Court has repeatedly declared that a public utility is entitled to a fair return on the fair value of its properties devoted to the public use at the time of the inquiry (*Board of Public Utility Comrs. v. New York Teleph. Co.* (1926), 271 U. S. 23, *McCardle v. Indianapolis Water Co.* (1926), 272 U. S. 400), and will not, we are confident, permit the continued confiscation of the Company's property upon any such highly speculative and problematical theory of relief.

REASONABLENESS OF PROPOSED FARE.

The 7¢-6¼¢ fare authorized by the court below as a condition of the injunction and as the maximum beyond which the Company could not charge is the identical fare proposed by the Company to the Commission and rejected by the Commission. For the purpose of testing the reasonableness of said fare His Honor Judge Hunt, at the hearing before the court below, asked the Company to submit some mathematical demonstration of what rate should be charged in order to yield not to exceed 8% on the $42,000,000 rate base [R. 523]. In pursuance of such request the Company subsequently filed with the court an affidavit by its consulting engineer Sachse showing that on the $42,000,000 base **a straight 7¢ fare** would probably yield a return of 7.38% [R. 527-33], and the Commission filed a statement entitled "Computation of flat fares which will produce various rates of return on the system of the Los Angeles Railway Corporation (based on 1927 operation)." [R. 524-6.] The atten-

tion of the Court is here directed to the fact that the computation submitted by the Company in response to the court's request was signed and sworn to and set forth in detail the sources from which the figures therein contained were derived, whereas the computation submitted by the Commission was neither signed nor sworn to and contained practically no supporting data. Manifestly, therefore, the court below was amply justified in resolving this conflict in evidence in favor of the Company.

That the preponderance of the evidence in the record before the Commission on the question of the reasonableness of the proposed fare is also greatly in favor of its reasonableness is apparent from the following demonstration from that record.

Company witness Sachse collaborated in the preparation of and introduced in evidence before the Commission Exhibit 22 [R. 443] and testified in connection therewith that on the basis of a 90% use of tokens and a 5% loss in traffic the proposed fare would probably produce an operating income of $3,235,557 [R. 475-6]. This is a return of 7.7% on the Commission's $42,000,000 rate base. If there should be a greater loss in traffic the return, he testified, would of course be less [R. 476].

B. W. Campbell, transportation engineer of the Company, prepared and introduced in evidence before the Commission Exhibit 23 entitled "Estimates of Revenue from Increased Rates under Various Conditions." [R. 444.] Testifying in connection with said exhibit he stated that a fair estimate of the effect of the proposed fare would be that 10% of the revenue passengers would

pay the cash fare of 7¢ and 90% would use the 6¼¢ tokens, with a loss in traffic somewhere between 5 and 10% for the first year, which would result in a total revenue between $13,598,000 and $14,553,000 [R. 484]. Deducting from said gross revenue figure of $14,553,000 the Commission's finding of total operating expense of $11,183,739 [R. 167] leaves a net income of $3,360,000, or a return of 8% on the Commission's $42,000,000 rate base.

City witness Wilcox, testifying on the subject of increased rates, said:

> "You raise rates and decrease the use, you may go beyond the economic limit. I would say that by no means is the 5¢ fare the economic limit, 6¢ is perhaps not the economic limit and 7¢ is probably not." [R. 489.]

As against the above evidence, supported by the detailed figures of the Company in its respective exhibits, the record discloses that the only other evidence before the Commission on the subject of the proposed fare was Exhibit 64 [R. 469], prepared and introduced in evidence by the Commission witness Mott, in which he estimated that the proposed fare, with an 80% use of tokens and a 6% loss in traffic would increase the gross revenue $2,454,000, which would result in a return of 9.4% [R. 469]. In his testimony in connection with this exhibit the witness gave no supporting data and only repeated his conclusions with the added statement that: "Even under the lowest estimates this form of fare would result in increasingly liberal return" [R. 497-8].

In the face of this record before it the Commission accepted its own witness' estimate and found as a fact that the proposed fare would yield a return of 9.4% and was therefore unjust and unreasonable [R. 167].

In addition to the above record before the Commission there was also before the court below the affidavit of the Company witness Sachse, in support of the motion for interlocutory injunction, to the fact that the economic limit of the rate of fare would not nearly have been reached under the proposed fare and that if a less fare was fixed it would be extremely difficult, if not impossible, to finance necessary improvements, betterments and extensions and the Company would be forced to curtail service and to retrench to such a degree as to effect the service and the business and development of the City unfavorably and detrimentally [R. 326]. This testimony stands undenied and uncontradicted in the entire record before the court below. In the same affidavit, appear Table E and Table F [R. 332-5] which are, respectively, this witness' estimates of operating results from the proposed fare for the first 12 months after its effective date, and such results for the year 1927 if such fare had been in effect. In both tables the Commission's $42,000,000 rate base is used. These two tables, when read in connection with the witness' supporting statements in his said affidavit [R. 333 to 338], show that the proposed fare, for the first 12 months after being put into effect, and assuming operations were resumed at normal, would yield a return of 6.29% on the $42,000,000 base, and that if said fare had been in effect during 1927 it would have yielded on the $42,000,000 a return of 7.98% under

the actual curtailed operations of that year and a return of 5.92% had the operations been normal. As against this detailed analysis of the estimated results of the proposed fare the Commission and the City, up to the time of submission of the matter to the court below, offered in contradiction only the following bare conclusion from the counter affidavit of the Commission witness Mott: "Affiant believes that the establishment of plaintiff's proposed rates will produce a gross revenue in excess of $15,708,000, leaving a net income of approximately $3,950,000" [R. 353].

After the submission of the entire matter to the District Court the Commission and the Company each filed the computations referred to above, in response to the court's request for a mathematical calculation as to what rate should be charged in order to yield not to exceed 8% on the Commission's $42,000,000 rate base [R. 523]. The Commission's computation appears in full in the record here at pages 524 to 526, inclusive, and the Company's at pages 527 to 532, inclusive. In addition to the fact that the Commission's computation, as we have heretofore pointed out, is neither signed nor sworn to and contains little, if any, supporting data, its inaccuracies and distortions are as patent as are its contradictions with the testimony of the Commission's own witnesses in the record before the Commission.

No argument is necessary to persuade this Court that in an action of this kind there are three things which must be stated fairly and with reasonable accuracy; first, the value of the property (rate base); second, the income (gross revenue); and, third, the expenses (cost of ser-

vice). When the expenses are deducted from the income what is left, of course, is "the return", and the "rate of return" is the percentage of the net income based on the valuation of the property. Neither is any argument necessary to show that if any one of these three items is distorted the result (which is the fare) must necessarily be wrong and must be unfair either to the public or to the utility. The question of valuation being eliminated in this action, leaves for present analysis in the Commission's computation the two items, income and expenses. It follows also that if the gross revenue appearing in said computation is misrepresented or exaggerated the net income of course will be correspondingly misrepresented or exaggerated, and if the expenses are misstated and reduced regardless of the facts and of the record, then obviously the net income will likewise be fictitiously increased by the exact amount in which the expenses are so understated. With these fundamental principles in mind the gross revenue and expense figures of the Commission's computation can readily be shown to be inaccurate and distorted and in direct contradiction to the record both before the Commission and before the court below.

The Commission's computation purports to show three studies of the fare necessary to produce a 6% return, a 7% return and an 8% return, respectively, as well as a study purporting to show that under the proposed fare the Company will receive a return estimated at from 10.6% to 14.2% on the Commission's rate base of $42,000,000 [R. 524-5]. The inaccuracy and unreliability of the said first three studies is demonstrated by the fact that each of them, as said computation shows, is based on the

totally erroneous assumption that all revenue passengers on the Company's system would pay the 5.27¢, the 5.48¢ and the 5.69¢ fare used in said respective studies, and that in none of those instances would there be any loss in traffic.

The Commission has found, in the decision complained of [R. 167], that the proposed fare would produce a net annual return of 9.4% on $42,000,000, and the Commission's chief engineer Mott testified before the Commission that in his judgment under the proposed fare there would be a 6% loss of traffic with an 80% use of tokens, resulting in an increase in revenue of $2,454,000 [R. 469]. This is the source of the Commission's 9.4% return figure. The Commission's computation, however, purports to show that there will be only a 60% use of tokens and that the return on $42,000,000 will be 12.1% [R. 526]. In other words, although the testimony of the Commission's own chief engineer and the Commission's findings of fact is that the proposed rates would yield the Company 9.4% on $42,000,000, the computation repudiates that testimony and that finding and says that the return under the same fare and upon the same rate base would not be 9.4% but would be either 10.6%, 12.1% or 14.2%. It is to be noted here also that the source of the figures in this portion of the Commission's computation is not shown, and that it is impossible to ascertain therefrom how the individual figures are computed or upon what information or what evidence they are based. Except for the rate base figure of $42,000,000 anl a portion only of the actual operating expenses for the year 1927, the figures in said computation are based neither upon the record before the

Commission and the court below, nor upon the Company's actual experience. They are entirely new figures, except for those two items, and do absolute violence both to the actual experience of the Company, even under curtailment and abnormally low operating expenses, and to the record now before the Court.

The study contained in the Commission's said computation which purports to show "increases in net income under fares proposed by plaintiff" [R. 526], is also particularly misleading and inaccurate in its first two columns in which it purports to show that the return would be 14.2% if all passengers use the 7¢ fare and 10.6% if all passengers use the 6¼¢ token fare. It is, of course, perfectly obvious that with an opportunity to buy transportation at a considerably lower rate it is inconceivable that 100% of the car riders will ignore the lesser rate and pay the full 7¢ fare. Equally obvious it must be, from the testimony both of the Commission's witness Mott [R. 469] and of the Company's witness Campbell [R. 484], that not all of the former 5¢ passengers will continue to ride under an increased fare, and that there will be a loss in traffic of from 5 to 10%. The seriousness to the Company of a computation of this sort is apparent when it is pointed out that a 6% loss in traffic under a 7¢ fare amounts to a reduction in net income of $1,068,745; and under a 6¢ fare amounts to a reduction in net income of $916,067. Yet it is only in such manner and by such disregard of the record and the facts that the figures of net return contained in the Commission's computation are reached.

The Commission's computation is also grossly inaccurate in its depreciation figures. In order to arrive at an equit-

able and logical result the basis of figuring depreciation must be the same as the basis of the valuation or rate base. We insisted before the court below that the Commission used historical reproduction cost as the sole basis of its valuation and we have also insisted that it has similarly used historical reproduction cost as the basis for computing the Company's depreciation allowance. The Commission has denied these allegations and states that they have taken in consideration all elements of value [R. 196, 268]. For the purpose of the present proceeding, and for that purpose alone, we have accepted that denial and we have taken in our computation of operating expenses the depreciation expenses **as fixed by the Commission's own engineers for the year 1927** [fol. p. 451 between R. 464-5]. Yet the amount of $979,209 for depreciation which the Commission takes in its study entitled "Actual Operations—Year 1927", as contained in its computation [R. 524], is a 5% sinking fund calculation based on historical reproduction cost exclusively [fol. p. 451] between R. 464-5] and there should have been allowed for depreciation the straight-line amounts of either $1,556.917 or $2,013,091, both of which were fixed by the Commission's own engineer [fol. p. 451 between R. 464 and 465], and the lower of which the Company used in its computation [R. 529].

Note No. 1 of said study of actual operations for the year 1927 states that: "The actual net charges to the depreciation reserve during the year 1927 amounted to but $797,259" [R. 524]. Said amount of $797,259 has nothing whatever to do with the reserve operating allowance for depreciation for that year. Said amount does not at

all represent the depreciation of plaintiff's property for that year, but merely represents **the net retirements of property during that year, i.e.,** the amount of old property replaced by new property. The Commission's said figure of $797,259, therefore, includes nothing whatever for the depreciation that is continually taking place on all of the property that was not replaced during the year but which will have to be replaced in the future, whether that future be one year or ten years from 1927. Manifestly, any reasonable and fair annual depreciation allowance must cover the actual depreciation of all the Company's depreciable property during that year, regardless of whether such property happens to be replaced in any particular year.

It is impossible to make a **direct** check of the figures contained in the Commission's computation because the necessary underlying data are not shown. Nowhere is it shown what number of passengers the Commission estimates will pay the fare of 5.27¢, 5.48¢ or 5.69¢ to produce the estimated 6%, 7% and 8% returns, respectively, shown in the Commission's computation. It is possible, however, to make an indirect check of the figures, and to make such a check fair we will make it on the Commission's own assumptions, knowing what they are in language but not what they are in figures. The study contained in the Commission's computation entitled "to bring a 6% return" [R. 525] contains the following parenthetical note: "Calculated by adding to the basic 5¢ fare now in effect the increase in that fare represented by the above increase in gross revenue applied to the passengers of 1927 whose rates are now asked to be increased". The

studies in said computation "to bring a 7% return" and "to bring an 8% return" are similarly calculated. This note, if it means anything, must mean that the average higher fare is calculated only on that portion of the 1927 passengers who would be affected by a fare increase. The record shows [R. 444] that in 1927 more than ten million passengers did not pay the basic 5¢ fare, the majority of whom would not, therefore, be affected at all, and the rest only partially, by any rate increase. This class of passengers consists principally of school children who pay only one-half fare, 10¢ bus fares and commutation fares [R. 444]. Taking the figure of actual gross revenue for the year 1927 under the 5¢ fare of $13,287,601, shown in the Commission's said computation [R. 524], and adding thereto the figure of $638,778 purporting to show the additional gross income necessary to produce the 6% return [R. 525], gives a gross revenue figure of $13,926,379 which would be provided under a 5.27¢ average fare [R. 525]; and dividing said gross revenue figure of $13,926,379 by said average 5.27¢ fare gives a figure of **264,257,640,** which represents the total number of revenue passengers who would have to pay a fare of 5.27¢ to provide said gross revenue of $13,926.379. The record shows, however, [Chart I, Exhibit 2, between R. 384 and 385] that the total number of revenue passengers of all classes in 1927, including both rail and bus passengers and half-fare school children, was approximately **254,000,000.** In order, therefore, to produce the result shown in the Commission's computation it must have been assumed that approximately 10,000,000 **more** passengers would have paid the 5.27¢ fare than the actual number who in that

same year paid the lower 5¢ fare and all the other fares that would not be affected by any rate increase as shown above. Such an assumption and such a calculation, we submit, is worthy of no greater consideration than that given it by the court below, which ignored it. It is also a direct contradiction of the testimony of all witnesses, including the Commission's own chief engineer, all of whom testified, as we have hereinabove shown, that an increase in fare would result in a decrease in traffic variously estimated at from 5 to 10%. The Commission too, in the decision complained of, quotes [R. 169] the testimony of its chief engineer to the effect that in his opinion a decline in traffic may be expected from **any** fare in excess of 5¢, yet notwithstanding such testimony the computation submitted by the Commission to the court below completely repudiates the record before the Commission and indicates that there will be almost a ten million **increase** in revenue passengers under a higher fare of 5.27¢. The same assumptions are likewise indulged in the studies contained in said computation entitled "to bring a 7% return" and "to bring an 8% return", rendering them likewise totally unreliable.

To summarize, it is apparent from the above analysis that the Commission's computation is in direct conflict with the testimony of the Commission's own witnesses and with the finding of the Commission in that it grossly understates the Company's operating expenses and its actual and necessary expense of depreciation, and grossly over estimates and misrepresents to the extent of almost 10 million, the number of revenue passengers who would ride under the average rates of fare shown in said computation.

Contrast this computation of the Commission with that submitted to the court below by the Company and appearing in the record here at pages 527 to 532, inclusive, the latter signed and under oath, every figure therein clearly explained and its derivation identified, and all rested and founded upon the record before the Commission.

The Company computation shows that a **straight 7¢ fare** would yield a return of 7.38% on the Commission's $42,000,000 rate base [R. 530] and concludes with the sworn statement of affiant that "The above estimate is the most accurate and most reasonable computation I can make to comply with the Court's request and is based as to valuation and depreciation on the findings of the Commission and the computations of the Commission's engineers and as to revenues and operating expenses on plaintiff's actual operating experience during the last three years." [R. 532.]

The court below, we submit, was clearly justified in resolving this conflict in evidence by accepting the Company's computation [R. 547-548], and, in effect, holding that the proposed fare of 7¢-6¼¢ was not unreasonable

Conclusion.

In conclusion, it is submitted that all questions of fact involved in this appeal have been resolved by the court below in favor of the company on the conflict in evidence, and those findings have not been shown to be erroneous. The principles of law are well established and have long been adjudicated contrary to appellants' contentions.

In the *Interborough* case (*Gilchrist v. Interborough Rapid Transit Co.*, ... U. S. .....), decided by this court April 8, 1929, Mr. Justice McReynold said:

> "To support the action of the court below it would be necessary to show with fair certainty, first, that before the original bill was filed the commission had taken, or was about to take, some improper action in respect of the Interborough Company's new schedules or its application for leave to discontinue the 5 cent rate and establish one of 7 cents; and, secondly, that the 5 cent fare was so low as to be confiscatory, while the proposed charge of 7 cents was reasonable. We think neither of these things adequately appears from the record."
>
> *Gilchrist v. Interborough Rapid Transit Co.* (1929) .....U. S. ....., (73 L. Ed. 348, 355, Advance Sheets May 1, 1929.)

Both such things adequately appear in the record here. The state commission has taken improper action on the company's application for leave to discontinue the 5¢ fare and establish one of 7¢-6¼¢ The 5¢ fare, as the court below found, has clearly been shown to be confiscatory, and we have satisfied the court below, and have demonstrated to this court, that the proposed fare is reasonable.

The judgment should be affirmed.

Respectfully submitted,

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Solicitors for Appellee,
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PAUL R. WATKINS,
HERBERT F. STURDY,
Of Counsel

Los Angeles, California,
October 3, 1929.

FILE COPY

In the Supreme Court

OF THE

United States

Office Supreme
FILED
DEC 2
CHARLES

OCTOBER TERM, 1929

No. 60

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and THE CITY OF LOS ANGELES,

Appellants,

vs.

LOS ANGELES RAILWAY CORPORATION (a corporation),

Appellee.

PETITION FOR REHEARING JOINTLY PRESENTED BY APPELLANTS RAILROAD COMMISSION OF THE STATE OF CALIFORNIA AND CITY OF LOS ANGELES.

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Subject Index

Page

I. The court erred in holding that the City of Los Angeles possessed no power or authority to prescribe in franchise contracts the rates to be charged on street railway lines. The ruling in Home Telephone Company v. Los Angeles (1908), 211 U. S. 265, is not applicable to the case at bar..... 3

II. The rates prescribed in the various franchises would be binding upon the company even if the California law were silent on the question of power in the city to contract as to rates..... 7

III. The court erred in holding that the action of the Railroad Commission in 1921 and 1928 abrogated the franchise contract rates. The ruling in Denney v. Pacific Tel. & Tel. Co. (1928), 276 U. S. 97, is not applicable to the case at bar..... 9

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To the Honorable William Howard Taft, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Come now the appellants and respectfully submit their joint petition for rehearing on decision in the above matter rendered December 2, 1929.

This Honorable Court by its decision (Justices Brandeis, Holmes and Stone dissenting) affirmed a decree of the District Court of the United States for the Southern District of California enjoining the City of Los Angeles and the Railroad Commission of California from enforcing an order of the said Commission denying to appellee an increase in rates of fare over certain franchise contract rates or interfering with the collection by appellee of certain rates in excess of those fixed in said franchises.

The majority opinion is based on two principal holdings: (1) that the City of Los Angeles never possessed power or authority to contract as to rates of fare, and that, therefore, the rates prescribed in franchise contracts granted to the Los Angeles Railway Corporation and its predecessor companies are not binding on said company, and (2) that the exercise of jurisdiction by the Railroad Commission of California in 1921 and 1928 abrogated the franchise contract rates, assuming such to have been binding upon the company.

We most respectfully submit that this Honorable Court has erred in its decision, and that rehearing should be granted. We will briefly urge the following points:

I. The Court erred in holding that the City of Los Angeles possessed no power or authority to prescribe in franchise contracts the rates to be charged on street railway lines. The ruling in *Home Telephone Company v. Los Angeles* (1908), 211 U. S. 265, is not applicable to the case at bar.

II. The rates prescribed in the various franchises would be binding upon the company even

if the California law were silent on the question of power in the city to contract as to rates.

III. The Court erred in holding that the action of the Railroad Commission in 1921 and 1928 abrogated the franchise contract rates. The ruling in *Denney v. Pacific Tel. & Tel. Co.* (1928), 276 U. S. 97, is not applicable to the case at bar.

I. THE COURT ERRED IN HOLDING THAT THE CITY OF LOS ANGELES POSSESSED NO POWER OR AUTHORITY TO PRESCRIBE IN FRANCHISE CONTRACTS THE RATES TO BE CHARGED ON STREET RAILWAY LINES. THE RULING IN HOME TELEPHONE COMPANY v. LOS ANGELES (1908), 211 U. S. 265, IS NOT APPLICABLE TO THE CASE AT BAR.

In the briefs heretofore filed by appellants authorities were cited and developed at length which were believed to give to the City of Los Angeles power and authority to insert in various franchise contracts provisions as to rates of fare to be charged on street railway lines operating in the city.[1]

It has been held in the majority opinion that the rule enunciated in the *Home Telephone* case, supra, is controlling in the case at bar. In that case the city charter of the City of Los Angeles gave to the city a continuing power to regulate telephone rates. No express power was given to the city to contract as to such rates. It was quite properly held in that case that the city was not bound to adhere to the rates which had been prescribed for a term of years in a franchise granted by the city, it having had no power

1. Authorities on this point were cited in the brief of the Railroad Commission at pp. 20 to 33, inclusive, and in the brief of the City of Los Angeles at pp. 24 to 37, inclusive.

or authority to contract away or divest itself of its continuing power to regulate telephone rates.

It is respectfully submitted that the principle laid down in the *Home Telephone* case is not applicable to the case at bar. As was pointed out in the briefs of appellants [2] and in argument at the bar, the City of Los Angeles prior to 1911 possessed no power to regulate rates to be charged by street railway companies operating in that city, nor did any state agency possess any such power.[3] It was only from 1911 to

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2. Railroad Commission brief, p. 26; City brief, p. 33.

3. Appellee in its brief (pp. 27 to 29, inclusive), urged that the City of Los Angeles from 1879 down to the time of delegation of power to the Railroad Commission in 1914 possessed power to regulate rates of all public utilities operating in the city by virtue of the provisions of Section 11, Article XI, of the California Constitution. That section, adopted in 1879, provides "Any county, city, town, or township, may make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws." In support of this contention appellee cited nine cases and stated the facts in none of them. A cursory reading of these decisions shows that not one of them held or purported to hold that Section 11, Article XI, gave to cities the power to regulate rates of public utilities.

We find that no California decision has ever construed Section 11, of Article XI, as a delegation of power to cities to regulate the rates of public utilities. That the said provision of the Constitution could not have been so intended is evident from a consideration of other California constitutional provisions; Section 1, Article XIV (1879) gave to cities power to regulate rates charged by public utility water companies; Section 19, Article XI (1885), gave to cities power to regulate rates to be charged for the sale of water or artificial light; Section 19, Article XI (as amended in 1911), gave to cities power to regulate rates charged for light, water, power, heat, *transportation* and telephone service. These constitutional provisions in part expressly delegating to cities power to regulate rates of certain public utility service, would to that extent have been wholly unnecessary if Section 11, Article XI, had given to cities the powers ascribed to it by appellee.

The fact that Section 11, Article XI, of the California Constitution did not delegate to cities power to regulate the rates charged

1914 that the City of Los Angeles enjoyed any power to regulate rates charged by street railway companies.[4] In 1914 the power to regulate was reserved to the Railroad Commission, although the right was reserved to cities to grant franchises to public utilities upon the terms and conditions theretofore permitted.[5]

In examining the law of California to determine whether the City of Los Angeles had power to prescribe in street railway franchises the rates of fare

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by public utilities is further borne out by noting that the city charter of Los Angeles by amendment in 1889 (Stats. 1889, p. 464) expressly gave to the city power to regulate certain public utility services other than street railway service, to-wit, the sale and use of gas, electric light and telephone service, and delegated to the city power to regulate the rates to be charged for the same. (It was this charter provision (Sec. 31) that was before this Court in the *Home Telephone* case). It was not until 1911, by the amendment of the city charter (Stats. 1911 p. 2063, set forth in Railroad Commission brief, p. 25) and by the amendment of Section 19, Article XI, California Constitution, in 1911 (set forth in Railroad Commission brief, p. 26) that the City of Los Angeles acquired power to regulate rates to be charged by street railway companies.

The fact that Section 11, Article XI, of the California Constitution did not delegate to cities power to regulate rates of public utilities was clearly pointed out in *Pratt v. Spring Valley Water Co.* (1914), a Railroad Commission decision written by Honorable Max Thelen, president of the Commission and reported in 4 Opinions and Orders of Railroad Commission of California, 1077.

The California decisions holding that cities possess the power to regulate public utility rates have invariably found the authority for such regulation under charter or statutory authority or under constitutional sections expressly delegating the power. The following decisions are significant on this point: *Pinney and Boyle v. Los Angeles Gas & Electric Co.*, 168 Cal. 12, 15; *Title Guarantee and Trust Co. v. Railroad Commission*, 168 Cal. 295, 301; *Home Tel. & Tel. Co. v. City of Los Angeles*, 155 Fed. 554, 562; 211 U. S. 265, 271; *Denninger v. Recorder's Court*, 145 Cal. 629, 632.

4. Railroad Commission brief, p. 26.

5. Railroad Commission brief, pp. 27 to 30.

to be charged, we are thus not seeking to find power or authority to defeat any power to regulate which the city enjoyed (as in the *Home Telephone* case), the city having been possessed of no such power to regulate, except from 1911 to 1914. In view of this absence of power in the city to regulate rates of street railway companies, except for the period noted, we respectfully submit that this Honorable Court erroneously applied the ruling in the *Home Telephone* case to the case at bar.

Prior to 1911 neither the City of Los Angeles nor any state agency possessed any power to regulate street railway rates. We respectfully submit that the numerous authorities cited by appellants constitute ample authority for the City of Los Angeles to insert in street railway franchises granted provisions definitely prescribing the rates of fare to be charged.[6]

The one and only method of providing for reasonable rates to the public prior to 1911, and the method which we submit was definitely contemplated and intended under the California law, was by giving the

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6. Railroad Commission brief, pp. 20 to 33; City brief, pp. 24 to 38. We particularly again call the attention of the Court to the provision of Civil Code Sec. 497 (Stats. 1891, p. 12), providing that authority to lay railway tracks through the streets of any incorporated city may be obtained from cities "under such restrictions and limitations, and upon such terms and payment of license tax, as the city, city and county, or town authority may provide * * *," and to the amendment to the city charter of the City of Los Angeles (Stats. 1905, p. 994), set forth at page 24 of Railroad Commission brief, controlling the granting of street railway franchises by the city, and providing in part that "every grant * * * shall make adequate provision by way of forfeiture of the grant or otherwise to secure efficiency of public service at reasonable rates and the maintenance of the property in good order throughout the term of the grant."

city express power to stipulate in the franchises sold the rates of fare to be charged, and such stipulation was a binding contract upon the parties thereto.

II. THE RATES PRESCRIBED IN THE VARIOUS FRANCHISES WOULD BE BINDING UPON THE COMPANY EVEN IF THE CALIFORNIA LAW WERE SILENT ON THE QUESTION OF POWER IN THE CITY TO CONTRACT AS TO RATES.

The franchises under which the railway is operating are confessedly contracts. It is conceded that the city possessed the general power to enter into the franchise contracts. They are solemn obligations. The company elected to bind itself to charge certain rates in consideration of the grant of the several franchises by the city. The company apparently got what it bargained for when it bought and accepted the franchises. When the various franchises were granted (except as to seven of them granted between 1911 and 1914, (R. 396)), the city possessed no continuing power to regulate rates of street railway companies and could conceivably prescribe rates only by stipulating the same in the franchises when and as granted. The city, therefore, was certainly in no legal position to recede from the franchise fixed rates, and has not attempted to do so. There was mutuality of contract and no failure of consideration has been shown or alleged by the company. The point was thus cogently presented by the dissenting justices:

> "*Fourth.* If the District Court erred in holding that the action taken in 1921 or 1928 had the effect of abrogating any existing contract, there must be a determination whether such contracts

did exist, in fact and law. It was assumed by the District Court and by counsel in this Court that if the City lacked the power to bind itself contractually by the fare provisions, the Railway could not be bound thereby. This conclusion is not commanded by logic or by the law of contracts. Lack of power in the municipality to bind itself is a factor to be considered in determining whether the parties intended to enter into a contract. But, if they did, the Railway's promise need not fail for lack of mutuality. The law does not require that a particular contractual obligation must be supported by a corresponding counter-obligation. It is conceded that the City possessed the power to enter into the franchise contract. The contention is merely that it could not surrender its power to regulate rates. But there is nothing in the fare provisions to indicate that the City attempted to do that. These provisions in terms bind only the Railway. The Railway unquestionably had power to agree to charge a fixed fare. The grant of the franchise is sufficient consideration, if so intended, for any number of contractual obligations which the Railway may have chosen to assume. In *Southern Iowa Electric Co. v. Chariton,* 255 U. S. 539, a case coming from Iowa, it was held, following Iowa decisions, that since the city lacked power to bind itself, there was no contract. And there is a statement to that effect in *San Antonio v. San Antonio Public Service Co.,* 255 U. S. 547, 556. But in *Southern Utilities Co. v. Palatka,* 268 U. S. 232, 233, the question was expressly left open. Obviously, that is a matter of state law on which the decisions of this Court are not controlling." (From dissenting opinion of Mr. Justice Brandeis, concurred in by Mr. Justice Holmes.)

"I agree with Mr. Justice Brandeis that this case should have been disposed of by remanding it to the district court of three judges for determination whether the railway company, under its

> 102 franchises, or any of them, is bound by contract to maintain a five-cent fare. That question is I think different from the one presented in *Home Telephone Co. v. Los Angeles,* 211 U. S. 265, and involved in *Detroit v. Detroit Citizens Railway Co.,* 184 U. S. 368; *Vicksburg v. Vicksburg Water Works Co.,* 206 U. S. 496, whether the city had the requisite legislative authority to bind itself not to reduce the rate of fare fixed by the franchise. Here concededly the power to regulate rates is reserved to the state commission and the question preliminary to the whole case is whether the railroad company has bound itself to serve for a five-cent fare. I know of no principle of the law of contracts, qua contracts, which would preclude its doing so, even though the city had no power to obligate itself to maintain any particular rate. It has not purported to exercise such power by so contracting. It had power to grant franchises and the grant of the franchise without more would be good consideration for the company's undertaking to maintain a five-cent fare. Williston on Contracts, Secs. 13, 140." (From dissenting opinion of Mr. Justice Stone.)

We respectfully submit that the rates prescribed in the various franchises would be binding upon the company even if the California law were silent on the question of power in the city to contract as to rates.

III. THE COURT ERRED IN HOLDING THAT THE ACTION OF THE RAILROAD COMMISSION IN 1921 AND 1928 ABROGATED THE FRANCHISE CONTRACT RATES. THE RULING IN DENNEY v. PACIFIC TEL. & TEL. CO. (1928), 276 U. S. 97, IS NOT APPLICABLE TO THE CASE AT BAR.

The facts of record show that the 1921 order of the Railroad Commission was permissive; that peti-

tion for rehearing filed by the company suspended the effectiveness of the order; that the order was revoked and the proceedings dismissed at the request of the company. Certainly this limited exercise of jurisdiction by the Commission did not *change* the existing franchise rates.

The 1928 order denied a rate increase. This is the antithesis of a *change* in the franchise rates. The rates in effect at all times prior to the decree of the District Court were the franchise rates and these had not been changed by the Railroad Commission or any other state agency.

Appellants in their briefs have cited numerous authorities holding that a franchise contract rate is abrogated when the rate is *changed* and any action short of an actual change in the rate is not an abrogation.[7]

This Honorable Court in the majority opinion has held that a mere exercise of jurisdiction of the Railroad Commission admittedly not resulting in a *change* of rate abrogated the franchise contract rates. We respectfully submit that this holding is patently unsound and at direct variance with many decisions of this Honorable Court and other Courts referred to in the briefs of appellants.

In holding that the 1921 and 1928 orders of the Railroad Commission abrogated the franchise rates the Court apparently relied upon the holding in *Denney v. Pacific T. & T. Co.* (1928) 276 U. S. 97. An

7. See Railroad Commission brief, pp. 56 to 72, and City brief, pp. 43 to 54.

examination of that decision shows that the facts are clearly distinguishable from those involved in the case at bar. The franchise contract rates involved in that case were abrogated (changed) in 1918: "control of the telephone systems owned by appellee were assumed by the Postmaster General, August 1, 1918, and retained for one year. He fixed rates for Seattle, Tacoma and Spokane higher than the maximum rates permitted by the original franchises" (p. 100). In 1919, after the termination of federal control, the said *legislative* rates were approved by the state regulatory body: "August 8, 1918, the Public Service Commission directed appellee to observe the rates established by the Postmaster General; and they continued to do so" (p. 100). Appellants in the *Denney* case conceded that the franchise rates had theretofore been *changed* but advanced this novel argument:

> "Appellants maintain that under the statutes of Washington when the department terminates a franchise rate and prescribes another the result is 'simply to terminate one rate and substitute therefor a new rate, and that, after such substition has been made, there still continues a franchise contract between the company and the city, which cannot be again changed except by the discretion of the department, and that the refusal of the department to exercise that discretion raises no question of confiscation.' Here, it is asserted, the department merely refused to change existing approved rates which were higher than the maximum originally specified in the granted franchise" (p. 101).

The United States District Court (W. D. Wash.) and this Honorable Court quite properly held that the franchise rates had been abrogated and that the

rates involved were legislative and not contractual. We respectfully submit that the *Denney* case and the ruling therein was improperly applied to the case now before the Court.

In support of our contention that the Court erred in holding that the action of the Railroad Commission of 1921 and 1928 abrogated the franchise rates, we respectfully take the liberty of quoting from the dissenting opinions in this matter.

> "*First.* Most of the franchises were granted before the State had vested in the Commission power to regulate street railway rates or had expressly reserved to itself, otherwise, the power to change rates theretofore fixed by ordinance. This power of regulation was first expressly conferred upon the Commission in 1915, by amendments to Secs. 13, 27 and 63 of the Public Utilities Act, Stats. 1915, p. 115, made pursuant to an amendment of Sec. 23 of Article XII of the California Constitution adopted November 3, 1914. These enactments did not purport to abrogate any existing contract. Nor did they purport to take from the City or from the County any power theretofore possessed to make a contract concerning the rate of fare. Their effect was merely to make any such contract, whether theretofore or thereafter entered into, subject to change by the Commission. Unless and until so changed a contractual fare fixed by franchise remains in full force. *Henderson Water Co. v. Corp. Comm.* 269 U. S. 278, 281-2. Consequently, it is not here claimed that these enactments alone abrogated the alleged contracts as to rate of fare.
>
> "*Second.* The Railway contends, however, that the Commission abrogated the fare contracts by its action taken in 1921 pursuant to this legislation. The facts are these. In 1918, the Railway asked the Commission to make an investigation of its service and its financial condition and for

an order enabling it to so operate its system that the income would be sufficient to pay the cost of the service. In that application the Railway expressly disclaimed any desire to increase its rate of fare, but about two years later, it made a supplemental application for leave to do so. On May 31, 1921, the Commission made a report in which it declared that 'an increase in the fare in some form' should be granted; and that the Railway be authorized 'to file with the Commission and put into effect within thirty (30) days from the date of this order a schedule of rates increasing the present basic five-cent fare to six cents,' ten tickets for 50 cents. 19 Cal. R. R. Comm. Op. 980, 1002. The Railway did not file a schedule of fares. Instead, it moved for a rehearing. That motion was promptly set down for hearing by the Commission, but was never heard. For the Railway asked first for an adjournment; then that its motion be stricken from the calendar; and finally, that an order be entered setting aside the decision made and dismissing the entire proceeding, including the application for increase of fare. This request of the Railway was granted, the order of dismissal reciting that the authorization to increase the fare had 'been suspended by virtue of the pendency of a petition for rehearing,' as the statutes provided. Public Utility Act, Sec. 66. Obviously this action taken in 1921 cannot be deemed an abrogation or modification of any existing fare provision of the franchises, unless it be held that mere entry by the Commission upon an enquiry as to the rate of fare, as commanded by the statute, has that effect. Reason and authority are to the contrary.

"*Third.* Nor did the action taken by the Commission in 1928, in the proceedings now under review, abrogate any existing fare provision. There also the Commission took jurisdiction, as it was by the statute required to do. It refused to authorize a higher fare, because it concluded that for the past five years the Railway had been

earning an average annual return of 7.1 per cent; that it was not being efficiently operated; that the management had failed to introduce certain economies previously recommended which would have increased its net earnings; and that for these reasons the existing five-cent fare was just and reasonable. The Commission may have erred in its judgment, but it is clear that it did not change the rate of fare. In *Georgia Ry. & Power Co. v. Decatur,* 262 U. S. 432, 439, it was held that the assumption of jurisdiction by the Commission to the extent of affirmatively ordering the continuance of existing transfer privileges did not effect an abrogation of an existing contract provision relating thereto, since such action did not conflict with the terms of the contract. Compare *Los Angeles v. Los Angeles City Water Co.,* 177 U. S. 558, 578-84; *Minneapolis v. Street Ry. Co.* 215 U. S. 417, 435. In *Denney v. Pacific Telephone Co.,* 276 U. S. 97, the Commission had previously granted an increase in fare of which the Company had availed itself.

"Assuming that the Railway was bound by contract to maintain a five-cent fare, it could be relieved from its obligation only by the Commission. Had the Commission authorized an increase in fare, it would still be questionable whether the contract would have been thereby abrogated or only modified by making the Railway's obligation less onerous. Surely, the Commission's refusal to grant any help, because in its opinion none is needed cannot have the anomalous effect of entirely relieving the Railway of its obligation." (Dissenting Opinion of Mr. Justice Brandeis, concurred in by Mr. Justice Holmes.) "Even if necessary to decide the question, I would not be prepared to say that the refusal of the commission to fix a fare different from the contract rate would destroy the contract. By contracting for a five-cent fare, the railway company waived the protection of the due process clause of the Fourteenth Amendment. *Columbus Ry.*

Co. v. Columbus, 249 U. S. 399; *Southern Iowa Electric Co. v. Chariton,* 255 U. S. 539, 542; *Paducah v. Paducah Ry. Co.,* 261 U. S. 267, 272; *Georgia Ry. Co. v. Decatur,* 262 U. S. 432, 438; *Henderson Water Co. v. Corporation Commission of N. C.,* 269 U. S. 278, 281. Granting that the contract was subject to the power and duty of the commission to modify it by changing the rate, that power has not been exercised and the duty is one arising, not under the Constitution and laws of the United States, but is imposed by state statute, for breach of which a state remedy alone should be given. See *Henderson Water Co. v. Corporation Commission,* supra, 282 (compare *Corporation Commission v. Henderson Water Co.,* 190 N. C. 70)." (From the dissenting opinion of Mr. Justice Stone.)

CONCLUSION.

For the convenience of the Court we have printed as an Appendix to our petition for rehearing the opinion of the Court in this matter, together with the separate opinion of Mr. Justice McReynolds, the dissenting opinion of Mr. Justice Brandeis, concurred in by Mr. Justice Holmes, and the dissenting opinion of Mr. Justice Stone.

We most respectfully submit that this Honorable Court has erred in its decision in the particulars above noted. We pray that rehearing be granted and that the case either be set down before the Court for further argument and leave granted to file new briefs in the matter, or that the case be referred back to the District Court for determination of the questions

o California law presented in accordance with the suggestion contained in the two dissenting opinions.

Dated, San Francisco,
December 19, 1929.

Respectfully submitted,

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CERTIFICATE OF COUNSEL.

I, Arthur T. George, counsel for the above named appellant Railroad Commission of the State of California, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

Dated, San Francisco,
December 19, 1929.

ARTHUR T. GEORGE,
Counsel for Appellant, Railroad Commission of the State of California.

(Appendix Follows.)

Appendix.

Appendix

SUPREME COURT OF THE UNITED STATES

No. 60.—October Term, 1929.

The Railroad Commission of the State of California and the City of Los Angeles, Appellants, *vs.* Los Angeles Railway Corporation.	Appeal from the District Court of the United States for the Southern District of California.

[December 2, 1929.]

Mr. Justice Butler delivered the opinion of the Court.

Appellee operates a street railway system and motor busses for the transportation of passengers in the city of Los Angeles and in other parts of the county of Los Angeles. Its cars are operated on tracks laid in the streets under authority of 102 franchises granted from time to time since 1886. A few were obtained from the county; the others were granted by the city.

Seventy-three granted between November 28, 1890, and October 21, 1918, covering 113.41 miles, provide that "the rate of fare . . . shall not exceed five cents."

Eighteen granted between March 2, 1920, and January 21, 1928, covering 12.33 miles, provide that "the rate of fare . . . shall not be more than five cents . . . except upon a showing before a competent authority having jurisdiction over rates of fare that such greater charge is justified."

The remaining eleven, covering 10.5 miles, were granted at various times from 1886 to 1923; none of them provides that the fare shall not exceed five cents; but it may be assumed that under the provisions of the other ordinances a fare of five cents was made applicable over all lines. Prior to the decree in this case the basic fare charged was five cents.

Maintaining that its existing rates were not sufficient to yield a reasonable return, the company, November 16, 1926, applied to the commission for authority to increase the basic fare to seven cents in cash or six and one-fourth cents in tokens to be furnished by the company, four for twenty-five cents. The commission, March 26, 1928, made a report and by an order denied the application. A petition for rehearing was denied.

June 22, 1928, the company brought this suit to have the rates and order adjudged confiscatory and for temporary and permanent injunctions restraining the commission from enforcing them. The city intervened as party defendant. The case came on for hearing before three judges on an application for temporary injunction. U. S. C., Tit. 28, § 380. Affidavits were submitted, a transcript of all the evidence before the commission was received and the parties stipulated that thereon the case should be finally determined on the merits. The court found that the rates will not permit the company to earn a reasonable return and are confiscatory; and by its decree permanently enjoined the commission from enforcing them.

The sole controversy is whether the company is bound by contract with the city to continue to serve for the fares specified in the franchises—it being conceded that the finding below respecting the inadequacy of the five cent fare is sustained by the evidence. Appellants contend that at all times the city had power to establish rates by agreement and that the franchise provisions constitute binding contracts that are still in force. On the other hand the company maintains that the State never so empowered the city; and it insists that, if the power was given and any such contracts were made, they have been abrogated.

1. It is possible for a State to authorize a municipal corporation by agreement to establish public service rates and thereby to suspend for a term of years not grossly excessive the exertion of governmental power by legislative action to fix just compensation to be paid for service furnished by public utilities. *Detroit v. Detroit Citizens' Ry. Co.*, 184 U. S. 368, 382. *Vicksburg v. Vicksburg Water Works Co.*, 206 U. S. 496, 508, 515. *Public Service Co. v. St. Cloud*, 265 U. S. 352, 355. And where a city, empowered by the State so to do, makes a contract with a public utility fixing the amounts to be paid for its service, the latter may not be required to serve for less even if the specified rates are unreasonably high. *Detroit v. Detroit Citizens' Ry. Co., supra*, 389. And, in such case, the courts may not relieve the utility from its

obligation to serve at the agreed rates however inadequate they may prove to be. *Public Service Co. v. St. Cloud, supra.*

This court is bound by the decisions of the highest courts of the States as to the powers of their municipalities. *Georgia Ry. Co. v. Decatur,* 262 U. S. 432, 438. Our attention has not been called to any California decision, and we think there is none, which decides that the state legislature has empowered Los Angeles to establish rates by contract. This Court is therefore required to construe the state laws on which appellants rely. As it is in the public interest that all doubts be resolved in favor of the right of the State from time to time to prescribe rates, a grant of authority to surrender the power is not to be inferred in the absence of a plain expression of purpose to that end. The delegation of authority to give up or suspend the power of rate regulation will not be found more readily than would an intention on the part of the State to authorize the bargaining away of its power to tax. *Providence Bank v. Billings,* 4 Peters 514, 561; *Railroad Commission Cases,* 116 U. S. 307, 325. *Freeport Water Co. v. Freeport,* 180 U. S. 587, 599. *Stanislaus County v. San Joaquin C. & I. Co.,* 192 U. S. 201, 210. *Puget Sound Traction Co. v. Reynolds,* 244 U. S. 574, 579.

This court applied the established rule in *Home Telephone Co. v Los Angeles,* 211 U. S. 265. That company's franchise was granted under the Broughton Franchise Act which provided that every such franchise "shall be granted upon the conditions in this act provided and not otherwise." The city charter gave power to its council to fix charges for telephone service. The franchise stated that the rates should not exceed specified amounts. An ordinance prescribing lower rates was passed. The company brought suit for injunction against its enforcement on the ground that the ordinance violated the contract clause of the Constitution of the United States. The city insisted that it had not been empowered by the State to make such a contract, and this court upheld its contention. It said (p. 273): "The surrender, by contract, of a power of government, though in certain well-defined cases it may be made by legislative authority, is a very grave act, and the surrender itself, as well as the authority to make it, must be closely scrutinized. . . . The general powers of a municipality or of any other political subdivision of the State are not sufficient. Specific authority for that purpose is required." And dealing with the charter provision there relied on by the company the court said (p. 274): "The charter gave to the council the power 'by

ordinance . . . to regulate telephone service and the use of telephones within the city, . . . and to fix and determine the charges for telephones and telephone service and connections.' This is an ample authority to exercise the governmental power . . . but entirely unfitted to describe the authority to contract. It authorizes command, but not agreement."

Section 470 of the Civil Code (March 21, 1872) cited by appellants merely regulates procedure. Section 497 authorizes political subdivisions to grant authority for the laying of railroads in streets "under such restrictions and limitations" as they may provide. Stats. 1891, p. 12. This is too general. The clause in § 501 (Stats. 1903, p. 172) providing that the rate of fare in municipalities of the first class "must not exceed five cents" does not relate to the power to contract, and plainly has no application here because Los Angeles never belonged to that class.

Section 1 of the Broughton Franchise Act[1] provides that franchises "shall be granted upon the conditions in the Act provided and not otherwise." The Act requires the sale of such franchises upon advertisement stating the character of the franchise or privilege proposed to be granted, but it nowhere expressly empowers the city to establish rates by contract. This court in the *Home Telephone Company* case dealt with the quoted provision. It said (p. 275): "Here is an emphatic caution against reading into the act any conditions which are not clearly expressed in the act itself. . . . It cannot be supposed that the legislature intended that so significant and important an authority as that of contracting away a power of regulation conferred by the charter should be inferred from the act in the absence of a grant in express words. But there is no such grant." And, so far as concerns the matter under consideration, the Act was not expanded by the amendment of June 8, 1915. It authorizes grantors of such franchises to impose such additional terms and conditions "whether

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[1]Its first sentence, as originally enacted, read: "Every franchise or privilege to . . . construct or operate railroads along or upon any public street or highway, or to exercise any other privilege whatever hereafter proposed to be granted by the . . . governing or legislative body of any . . . city . . . shall be granted upon the conditions in this Act provided, and not otherwise." Stats. 1893, p. 288. The Act was amended in 1897 (Stats. 1897, pp. 135, 172); re-enacted in 1901 (Stats. 1901, p. 265) and 1905 (Stats. 1905, p. 777) and amended in 1909. Stats. 1909, p. 105. The first sentence has remained substantially the same. The amendment of June 8, 1915 (Stats. 1915, p. 1300) inserted immediately after this sentence: "The grantor may, however, in such franchise impose such other and additional terms and conditions not in conflict herewith, whether governmental or contractual in character, as in the judgment of the legislative body thereof are to the public interest."

governmental or contractual in character" as in their judgment are in the public interest. This general language does not measure up to the rule earlier invoked here by Los Angeles and applied by this court in the *Home Telephone Company* case.

The appellants invoke provisions of the city charter which are printed in the margin.[2] But it requires no discussion to show that they are not sufficient to empower the city by contract to establish rates. In support of their claim, they cite *Columbus Ry. & Power Co. v. Columbus*, 249 U. S. 399; *Opelika v. Opelika Sewer Co.*, 265 U. S. 215; *Public Service Co. v. St. Cloud, supra*, and *Southern Utilities Co. v. Palatka*, 268 U. S. 232. But the *Columbus* case did not involve, and this Court did not there decide, the question of power. See p. 407 and 194 U. S. at pp. 532, 534. And in the other cases, we followed the decisions of the courts of the respective States.

Appellants have failed to sustain their contention that the city was empowered to make such rate contracts.

2. But assuming that the fares were established by the franchise contracts we are of opinion that such contracts have been abrogated. The State had power upon the company's application, through its commission or otherwise, to terminate them. *Pawhuska v. Pawhuska Oil & Gas Co.*, 250 U. S. 394. *Trenton v. New Jersey*, 262 U. S. 182, 186. *Henderson Water Co. v. Corporation Commission*, 269 U. S. 279. *Denney v. Pacific Tel. Co.*, 276 U. S. 97.

November 30, 1918, the company applied to have the commission investigate its service and financial condition and for an order authorizing it to "so operate its system and change its rates that the income will be sufficient to pay the costs of the service." May

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[2]Art. 1, § 2(25) (February 16, 1905) Stats. 1905, p. 994, providing that no franchise for use of public streets should be granted by the city except by a specified vote nor for a term of more than 21 years and that "Every grant . . . shall make adequate provision by way of forfeiture . . . or otherwise to secure efficiency of public service at reasonable rates and the maintenance of the property in good order throughout the term of the grant."

Art. I, § 2(30) (March 25, 1911) Stats. 1911, p. 2063: "The City . . . shall have the right and power: . . . to fix and determine the rates . . . for . . . the conveyance of passengers . . . by means of street railway . . . cars. . . . To regulate, subject to the provisions of the constitutions of the State of California, the construction and operation of . . . street railways. . . ."

Art. I, § 2(40), being § 2(25), *supra*, (as amended March 11, 1913) Stats. 1913, p. 1633: "The city . . . shall have the right and power: To grant franchises, . . . for furnishing . . . transportation . . . or any other public service; to prescribe the terms and conditions of any such grant, and to prescribe by ordinance . . . the method of procedure for making such grants; . . ."

31, 1921, the commission found that the existing fares would not permit the company to collect enough to enable it to provide adequate service. See P. U. R. 1922A 66, 90. And it made an order permitting a small increase. The company did not accept it, but applied for a rehearing. After several postponements the case was stricken from the calendar, and some years later the company asked that its application be dismissed. The commission, October 18, 1926, granted the company's request and also revoked the order.

Shortly thereafter the company applied for a basic fare of seven cents in cash or six and one-quarter cents in tokens. The fares so proposed were substantially higher than those which were not accepted by the company. Again the commission made extensive investigations. And March 26, 1928, it filed a report which contained findings as to the value of the property, operating revenues, operating expenses including cost of depreciation and taxes, amount available for return, average net income for five years ending with 1926, stated that the cost of operation might be reduced, and concluded that by reason of such facts the rates of fare charged by the company were not unreasonable and that the rates proposed would be unjust and unreasonable. And the commission made an order denying the company's application.

There is no decision in the courts of the State as to the effect of the proceedings before and action taken by the commission, and therefore we are required to construe the applicable provisions of the local constitution and statutes. *Denney v. Pacific Tel. Co., supra,* 101. Under the state constitution, Art. XII, §23, as amended November 3, 1914, and the Public Utilities Act of April 23, 1915, the commission has exclusive power to regulate rates. And § 27 of the Act[3] gave to street railway companies the right to charge more than five cents upon showing before the commission that the higher charge is justified. No distinction is made between rates established by franchise contracts and those otherwise fixed. Fares may not be changed without approval of the commission. The policy of the State is that all rates shall be just and reasonable (§ 15) and the commission is directed, whenever after hearing had upon its own motion or upon complaint it shall find that rates

[3]Section 27 declares that fares of more than five cents shall not be charged on street railroads "except upon a showing before the commission that such greater charge is justified; provided, that until the decision of the commission upon such showing, a street . . . railroad . . . may continue to . . . receive the fare lawfully in effect on November 3, 1914. Stats. 1915, p. 131.

are unjust or insufficient, to determine the just and reasonable rates thereafter to be observed. § 32 (a).[4] The language used in *Denney v. Pacific Tel. Co., supra,* p. 102, is pertinent here. "The Department made its investigation and order without regard to the franchise rates and treated the questions presented as unaffected thereby. It exercised the power and duty to fix reasonable and compensatory rates irrespective of any previous municipal action. We must treat the result as a bona fide effort to comply with the local statute."

The proceedings before the commission and its orders clearly show that it twice took jurisdiction to determine just and reasonable rates. Its order of May 31, 1921, by reason of the company's failure to put in the increased rates never became operative and finally was vacated. The report and order of March 26, 1928, found that existing rates were just and reasonable and in legal effect required the company to continue to observe them. The court below found the rates confiscatory, and appellants do not here question that finding.

Decree affirmed.

Mr. Justice McReynolds is of opinion that, as our finding that the city had no power to make rate contracts is sufficient to dispose of the case, it would be better not to take up the second point.

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[4]Section 32(a): "Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rates . . . collected by any public utility . . . are unjust, unreasonable, discriminatory or preferential, or in anywise in violation of any provision of law or that such rates . . . are insufficient, the commission shall determine the just, reasonable or sufficient rates . . . to be thereafter observed and in force, and shall fix the same by order as hereinafter provided." Stats. 1915, p. 132.

SUPREME COURT OF THE UNITED STATES

No. 60—October Term, 1929.

The Railroad Commission of California et al., *vs.* Los Angeles Railway Corporation.	On Appeal from the District Court of the United States for the Southern District of California.

[December 2, 1929]

Mr. Justice Brandeis, dissenting.

The Railway claims that the Commission's refusal to authorize a fare higher than five cents confiscates its property. The City and the Commission do not insist here that the five-cent fare is compensatory; and they concede that, since 1915, the latter has had jurisdiction to authorize a higher fare. They defend solely on the ground that the Railway bound itself by contracts not to charge more; that these contract provisions are still in force, except as modified by the Act of 1915 empowering the Commission to authorize changes in the rate; that an alleged error of the Commission in refusing authority to charge more can be corrected only by proceedings brought in the Supreme Court of the State to compel the Commission to do its duty; and that the lower court's finding that the rate is non-compensatory is, therefore, immaterial.

The District Court recognized that such contracts, if existing, would be a complete defense to this suit, *Columbus Ry. & Power Co.* v. *Columbus*, 249 U. S. 399; *Georgia Ry. & Power Co.* v. *Decatur*, 262 U. S. 432; *Opelika v. Opelika Sewer Co.*, 265 U. S. 215; *St. Cloud Public Service Co.* v. *St. Cloud*, 265 U. S. 352; *Southern Utilities Co.* v. *Palatka*, 268 U. S. 232; expressed a strong doubt whether the City ever had the power to contract concerning the rate of fare; and, declining to pass upon that question, granted the relief prayed for solely on the ground that any such contract right which existed had been abrogated.

The franchises under which the Railway is operating are confessedly contracts. The words used concerning the rate of fare are apt ones to express contractual obligations. The Railway contends, however, that the fare provisions were not intended to be contracts, and that, if they were so intended, they were not binding, because neither the City nor the County had the power to contract as to the rate of fare. It insists further that if the fare provisions were originally binding as contracts, they were abrogated in 1921 or 1928 by action of the Commission.

First. Most of the franchises were granted before the State had vested in the Commission power to regulate street railway rates or had expressly reserved to itself, otherwise, the power to change rates theretofore fixed by ordinance. This power of regulation was first expressly conferred upon the Commission in 1915, by amendments to §§ 13, 27 and 63 of the Public Utilities Act, Stats. 1915, p. 115, made pursuant to an amndment of § 23 of Article XII of the California Constitution adopted November 3, 1914. These enactments did not purport to abrogate any existing contract. Nor did they purport to take from the City or from the County any power theretofore possessed to make a contract concerning the rate of fare. Their effect was merely to make any such contract, whether therefore or thereafter entered into, subject to change by the Commission. Unless and until so changed a contractual fare fixed by franchise remains in full force. *Henderson Water Co.* v. *Corp. Comm.*, 269 U. S. 278, 281-2. Consequently, it is not here claimed that these enactments alone abrogated the alleged contracts as to rate of fare.

Second. The Railway contends, however, that the Commission abrogated the fare contracts by its action taken in 1921 pursuant to this legislation. The facts are these. In 1918, the Railway asked the Commission to make an investigation of its service and its financial condition and for an order enabling it to so operate its system that the income would be sufficient to pay the cost of the service. In that application the Railway expressly disclaimed any desire to increase its rate of fare, but about two years later, it made a supplemental application for leave to do so. On May 31, 1921, the Commission made a report in which it declared that "an increase in the fare in some form" should be granted; and that the Railway be authorized "to file with the Commission and put into effect within thirty (30) days from the date of this order a schedule of rates increasing the present basic 5-cent fare to 6 cents," ten tickets for 50 cents. 19 Cal. R. R. Comm. Op.

980, 1002. The Railway did not file a schedule of fares. Instead, it moved for a rehearing. That motion was promptly set down for hearing by the Commission, but was never heard. For the Railway asked first for an adjournment; then that its motion be stricken from the calendar; and finally, that an order be entered setting aside the decision made and dismissing the entire proceeding, including the application for increase of fare. This request of the Railway was granted, the order of dismissal reciting that the authorization to increase the fare had "been suspended by virtue of the pendency of a petition for rehearing," as the statutes provided. Public Utility Act, § 66. Obviously this action taken in 1921 cannot be deemed an abrogation or modification of any existing fare provision of the franchises, unless it be held that mere entry by the Commission upon an enquiry as to the rate of fare, as commanded by the statute, has that effect. Reason and authority are to the contrary.

Third. Nor did the action taken by the Commission in 1928, in the proceedings now under review, abrogate any existing fare provision. There also the Commission took jurisdiction, as it was by the statute required to do. It refused to authorize a higher fare because it concluded that for the past five years the Railway had been earning an average annual return of 7.1 per cent; that it was not being efficiently operated; that the management had failed to introduce certain economies previously recommended which would have increased its net earnings; and that for these reasons the existing five-cent fare was just and reasonable. The Commission may have erred in its judgment, but it is clear that it did not change the rate of fare. In *Georgia Ry. & Power Co.* v. *Decatur*, 262 U. S. 432, 439, it was held that the assumption of jurisdiction by the Commission to the extent of affirmatively ordering the continuance of existing transfer privileges did not effect an abrogation of an existing contract provision relating thereto, since such action did not conflict with the terms of the contract. Compare *Los Angeles* v. *Los Angeles City Water Co.*, 177 U. S. 558, 578-84; *Minneapolis* v. *Street Ry. Co.*, 215 U. S. 417, 435. In *Denney* v. *Pacific Telephone Co.*, 276 U. S. 97, the Commission had previously granted an increase in fare of which the Company had availed itself.

Assuming that the Railway was bound by contract to maintain a five-cent fare, it could be relieved from its obligation only by the Commission. Had the Commission authorized an increase in fare, it would still be questionable, whether the contract would

have been thereby abrogated or only modified by making the Railway's obligation less onerous. Surely, the Commission's refusal to grant any help, because in its opinion none is needed, cannot have the anomalous effect of entirely relieving the Railway of its obligation.

Fourth. If the District Court erred in holding that the action taken in 1921 or 1928 had the effect of abrogating any existing contract, there must be a determination whether such contracts did exist, in fact and law. It was assumed by the District Court and by counsel in this Court that if the City lacked the power to bind itself contractually by the fare provisions, the Railway could not be bound thereby. This conclusion is not commanded by logic or by the law of contracts. Lack of power in the municipality to bind itself is a factor to be considered in determining whether the parties intended to enter into a contract. But, if they did, the Railway's promise need not fail for lack of mutuality. The law does not require that a particular contractual obligation must be supported by a corresponding counter-obligation. It is conceded that the City possessed the power to enter into the franchise contract. The contention is merely that it could not surrender its power to regulate rates. But there is nothing in the fare provisions to indicate that the City attempted to do that. These provisions in terms bind only the Railway. The Railway unquestionably had power to agree to charge a fixed fare. The grant of the franchise is sufficient consideration, if so intended, for any number of contractual obligations which the Railway may have chosen to assume. In *Southern Iowa Electric Co.* v. *Chariton*, 255 U. S. 539, a case coming from Iowa, it was held, following Iowa decisions, that since the city lacked power to bind itself there was no contract. And there is a statement to that effect in *San Antonio* v. *San Antonio Public Service Co.*, 255 U. S. 547, 556. But in *Southern Utilities Co.* v. *Palatka*, 268 U. S. 232, 233, the question was expressly left open. Obviously, that is a matter of state law on which the decisions of this Court are not controlling.

Fifth. If it be true that the Railway is not bound by the fare provisions, unless the City had power to bind itself in that respect, it is necessary to determine whether the City had that power and whether the parties did in fact contract as to the rate of fare. Whether the City had the power is, of course, a question of state law. In California, the constitution and the statutes

leave the question in doubt. Counsel agree that there is no decision in any court of the State directly in point. They reason from policy and analogy. In support of their several contentions they cite, in the aggregate, 30 decisions of the California courts, 15 statutes of the State, besides 3 provisions of its code and 7 provisions of its constitution. The decisions referred to occupy 308 pages of the official reports; the sections of the constitution, code and statutes, 173 pages. Moreover, the 102 franchises here involved were granted at many different times between 1886 and 1927. And during that long priod, there have been amendments both of relevant statutes and of the constitution. The City or the County may have had the power to contract as to the rate of fare at one time and not at another. If it is held that the City or the County ever had the power to contract as to rate of fare, it will be necessary to examine the 102 franchises to see whether the power was exercised. It may then be that some of the franchises contain valid fare contracts, while others do not. In that event, the relief to be granted will involve passing also on matters of detail.

In my opinion, these questions of statutory construction, and all matters of detail, should, in the first instance, be decided by the trial court. To that end, the judgment of the District Court should be vacated and the case remanded for further proceedings, without costs to either party in this Court. Pending the decision of the trial court an interlocutory injunction should issue. Compare *City of Hammond* v. *Schappi Bus Line*, 275 U. S. 164; *City of Hammond* v. *Farina Bus Line & Transportation Co.*, 275 U. S. 173; *Ohio Oil Co.* v. *Conway*, 279 U. S. 813. It is a serious task for us to construe and apply the written law of California. Compare *Gilchrist* v. *Interborough Rapid Transit Co.*, 279 U. S. 159, 207-209. To "one brought up within it, varying emphasis, tacit assumptions, unwritten practices, a thousand influences gained only from life, may give to the different parts wholly new values that logic and grammar never could have got from the books." *Diaz* v. *Gonzalez*, 261 U. S. 102, 106. This Court is not peculiarly fitted for that work. We may properly postpone the irksome burden of examining the many relevant state statutes and decisions until we shall have had the aid which would be afforded by a thorough consideration of them by the judges of the District Court, who are presumably more familiar

with the law of California than we are. The practice is one frequently followed by this Court.[1]

In the case at bar, there are persuasive reasons for adopting the course suggested. The subject matter of this litigation is local to California. The parties are all citizens of that State and creatures of its legislature. Since the Railway denies that there ever was a valid contract governing the rate and asserts that if any such existed they have been abrogated, the contract clause of the Federal Constitution is not involved. The alleged existence of contracts concerning the rate of fare presents the fundamental issue of the case. Whether such contracts exist, or ever existed, depends wholly upon the construction to be given to laws of the State. Upon these questions, the decision of the Supreme Court of California would presumably have been accepted by this Court, if the case had come here on appeal from it. Compare *Georgia Ry. & Power Co.* v. *Decatur*, 262 U. S. 432, 438; *Appleby* v. *City of New York*, 271 U. S. 364, 380.

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[1]This course was pursued in the following, among other cases, in which a lower Federal court erroneously left undecided a question of local law or of its application, Gainesville *v.* Brown-Crummer Co., 277 U. S. 54, 61, Hammond *v.* Schappi Bus Line, 275 U. S. 164, 169-72, Hammond *v.* Farina Bus Line, 275 U. S. 173, 174-5, Wilson Cypress Co. *v.* Del Pozo, 236 U. S. 635, 656-7; in the following cases in which the lower court erroneously left undetermined a question of fact, Security Mortgage Co. *v.* Powers, 278 U. S. 149, 159, United States *v.* Magnolia Co., 276 U. S. 160, 164-5, United States *v.* Brims, 272 U. S. 549, 553, Gerdes *v.* Lustgarten, 266 U. S. 321, 327, Chastleton Corp. *v.* Sinclair, 264 U. S. 543, 548-9, Vitelli & Son *v.* United States, 250 U. S. 355, 359, Southern Pacific Co. *v.* Bogert, 250 U. S. 483, 494, 497, Union Pac. R. R. Co. *v.* Weld County, 247 U. S. 282, 287, Marconi Wireless Co. *v.* Simon, 246 U. S. 46, 57, Owensboro *v.* Owensboro Waterworks, 191 U. S. 358, 372, Chicago, Milwaukee &c. Ry. *v.* Tompkins, 176 U. S. 167, 180; in the following cases in which the Circuit Court of Appeals did not review the merits because of an erroneous view of the jurisdiction of the District Court, Guardian Savings Co. *v.* Road Dist., 267 U. S. 1, 7, Brown *v.* Fletcher, 237 U. S. 583, 586-8, cf. Louie *v.* United States, 254 U. S. 548, 551; in the following cases in which the Circuit Court of Appeals restricted its review because it erroneously regarded the action as one at law instead of a suit in equity, Twist *v.* Prairie Oil Co., 274 U. S. 684, 692, Liberty Oil Co. *v.* Condon Bank, 260 U. S. 235, 245; in the following cases in which the Circuit Court of Appeals erroneously narrowed the scope of its review for other reasons, Krauss Bros Co. *v.* Mellon, 276 U. S. 386, 394, National Brake Co. *v.* Christensen, 254 U. S. 425, 432; in the following cases in which the State court placed its decision on an erroneous view of federal law, and, therefore, did not consider the questions of local law involved, Chicago & N. W. Ry. *v.* Durham Co., 271 U. S. 251, 257-8, Sioux City Bridge Co. v. Dakota County, 260 U. S. 441, 445-7, Ward *v.* Love County, 253 U. S. 17, 25. In all of these cases, this Court recognized its undoubted power to decide the matters erroneously left undetermined by the courts below; but it preferred to remand the cases for further proceedings, either on the ground that the determination of the undecided issues was too burdensome a task, or on the ground that those issues should more appropriately be decided, in the first instance, by the lower courts.

The constitutional claim of confiscation gave jurisdiction to the District Court. We may be required, therefore, to pass, at some time, upon these questions of state law. And we may do so now. But the special province of this Court is the Federal law. The construction and application of the Constitution of the United States and of the legislation of Congress is its most important function. In order to give adequate consideration to the adjudication of great issues of government, it must, so far as possible lessen the burden incident to the disposition of cases, which come here for review.[2]

Mr. Justice HOLMES joins in this opinion.

2Compare "Distribution of Judicial Power between the United States and State Courts," by Felix Frankfurter, XIII Cornell Law Quarterly, 499, 503; "The Business of the Supreme Court at October Term 1928," by Frankfurter and Landis, XLIII Harvard Law Review, 33, 53, 56, 59-62.

SUPREME COURT OF THE UNITED STATES

No. 60.—OCTOBER TERM, 1929.

The Railroad Commission of the State of California and the City of Los Angeles, Appellants,
vs.
Los Angeles Railway Corporation.

Appeal from the District Court of the United States for the Southern District of California.

[December 2, 1929.]

Dissenting opinion of Mr. Justice STONE.

I agree with Mr. Justice BRANDEIS that this case should have been disposed of by remanding it to the district court of three judges for determination whether the railway company, under its 102 franchises, or any of them, is bound by contract to maintain a five-cent fare. That question is I think different from the one presented in *Home Telephone Co.* v. *Los Angeles*, 211 U. S. 265, and involved in *Detroit* v. *Detroit Citizens Railway Co.*, 184 U. S. 368; *Vicksburg* v. *Vicksburg Water Works Co.*, 206 U. S. 496, whether the city had the requisite legislative authority to bind itself not to reduce the rate of fare fixed by the franchise. Here concededly the power to regulate rates is reserved to the state commission and the question preliminary to the whole case is whether the railroad company has bound itself to serve for a five-cent fare. I know of no principle of the law of contracts, *qua* contracts, which would preclude its doing so, even though the city had no power to obligate itself to maintain any particular rate. It has not purported to exercise such power by so contracting. It had power to grant franchises and the grant of the franchise without more would be good consideration for the company's undertaking to maintain a five-cent fare. Williston on Contracts, §§ 13, 140.

The provision of the statute of March 1, 1913, enacted after the decision in *Home Telephone Co.* v. *Los Angeles, supra*, authoriz-

ing the city to grant franchises and "to prescribe the terms and conditions" of the grant, and that of the act of June 8, 1915, authorizing the grantor of the franchise to impose terms and conditions "whether governmental or contractual in character," to quote no others, would seem to permit the city to acquire by the mere grant of the franchise, without other obligation on its part, such contractual undertakings on the part of the railroad company as did not contravene the public interest.

If there be any public policy forbidding the company so to bind itself or forbidding the city to take advantage of the undertaking so given and acquired, it is one peculiar to local law, having its origin in local history and conditions, and so is peculiarly an appropriate subject for consideration, in the first instance, by the court of the district.

But as the Court, without dealing with this aspect of the matter, has held that the railway company is not so bound, it is unnecessary to decided that the state railroad commission's refusal to raise the rate would have been enough to abrogate the contract, if there had been one, and the practice of the Court not to pass on questions of constitutional or state law not necessary to a decision should, I think, be scrupulously observed. Even if necessary to decided the question, I would not be prepared to say that the refusal of the commission to fix a fare different from the contract rate would destroy the contract. By contracting for a five-cent fare, the railway company waived the protection of the due process clause of the Fourteenth Amendment. *Columbus Ry. Co.* v. *Columbus*, 249 U. S. 399; *Southern Iowa Electric Co.* v. *Chariton*, 255 U. S. 539, 542; *Paducah* v. *Paducah Ry. Co.*, 261 U. S. 267, 272; *Georgia Ry. Co.* v. *Decatur*, 262 U. S. 432, 438; *Henderson Water Co.* v. *Corporation Commission of N. C.*, 269 U. S. 278, 281. Granting that the contract was subject to the power and duty of the commission to modify it by changing the rate, that power has not been exercised and the duty is one arising, not under the Constitution and laws of the United States, but is imposed by state statute, for breach of which a state remedy alone should be given. See *Henderson Water Co.* v. *Corporation Commission, supra*, 282 (compare *Corporation Commission* v. *Henderson Water Co.*, 190 N. C. 70).

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CHARLES ELMORE

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1929.

No. 60.

The Railroad Commission of the State of California, and the City of Los Angeles,

Appellants.

vs.

Los Angeles Railway Corporation, a corporation,

Appellee.

APPELLEE'S REPLY TO PETITION FOR REHEARING.

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Los Angeles, California, December 20th, 1929.

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SUBJECT INDEX.

PAGE

I. Reply to Petitioner's Point I 3

II. Reply to Petitioner's Point II 5

III. Reply to Petitioner's Point III 7

Conclusion 9

CASE INDEX.

PAGE

City of Arcota v. Green, 156 Cal. 759 5

Denney v. Pacific Tel. & Tel. Co., 276 U. S. 97 8

Home Telephone Co. v. Los Angeles, 211 U. S. 265 4

In re Montgomery, 163 Cal. 457 ..... 4, 5

Interstate Commerce Comm. v. Louis. & Nash. R. R. Co., 277 U. S. 88 8

San Antonio v. San Antonio Public Service Co., 255 U. S. 547 .. 7

Southern Iowa Electric Co. v. Chariton, 255 U. S. 539 ..... 4, 6, 7

Thompson v. Board of Supervisors, 111 Cal. 553 6

Town of St. Helena v. Ewer, 26 Cal. App. 191 5

IN THE

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OCTOBER TERM, 1929.

No. 60.

The Railroad Commission of the State of California, and the City of Los Angeles, *Appellants,*	
vs.	
Los Angeles Railway Corporation, a corporation, *Appellee.*	

APPELLEE'S REPLY TO PETITION FOR REHEARING.

Although Rule 33 makes no provision for a reply to a petition for rehearing we are advised by the clerk that the practice permits the acceptance and distribution of such a reply provided it is filed prior to or at the time of the filing of the petition. Accordingly appellee submits briefly the following observations in reply to appellants' petition for rehearing and in opposition to the granting of same:

I.

The majority opinion has considered every pertinent provision of the State's constitution, its codes, its statutes, and the City's charters, and from that consideration has held that there has never been a grant of power to the

City to contract as to rates. This holding, we submit, is not only fully supported by, but is in entire conformity with, the principles enunciated in this court's decisions in *Home Telephone Co. v. Los Angeles,* 211 U. S. 265; *Southern Iowa Electric Co. v. Chariton,* 255 U. S. 539, and *San Antonio v. San Antonio Public Service Co.,* 255 U. S. 547.

The petitioners argue, however, that the City never had power to regulate rates and upon this premise seek to draw the tenuous conclusion that the City must necessarily have had the power to contract as to rates. It is submitted that the very basis of this argument does not exist. That the City possessed full power to regulate rates at all times up to November 3, 1914, is conclusively shown, we submit, on pages 27 to 31, appellee's brief, where it appears that the State Supreme Court has repeatedly held that section 11, article XI of the State Constitution makes a direct grant of the entire police power of the State to municipalities. The Supreme Court of California has also held that the grant of police power to municipalities contained in section 11, article XI of the Constitution is not limited or restricted because elsewhere in the laws of the State there may appear other specific grants of power. Thus in the case of *In re Montgomery* (1912), 163 Cal. 457, 459-60, the charter of Los Angeles gave the city power "to license, regulate, restrain, suppress or prohibit * * *" certain enumerated businesses. The city passed an ordinance to regulate another business not enumerated. The Supreme Court upheld the ordinance, saying:

> "Petitioner's most important contention is that the enumeration in the charter of Los Angeles of certain trades, callings, and occupations which may be pro-

hibited excludes the prohibition by ordinance of others not so enumerated. * * *

"This, petitioner contends, is a limitation upon the general police power conferred by section 11 of article XI of the Constitution and by a similar section of the charter * * *.

"By specifying certain occupations that may be prohibited, petitioner maintains, the charter withholds from the city council the power to prohibit any others for, he says, the legislative body of a city having a freeholders' charter may be limited in the exercise of police power by a charter provision. * * *

"In the Pfahler case * * * 'It was held that nothing contained in the charter could affect the grant made by the Constitution, and that the city, under such constitutional grant, had the right to exercise the whole police power of the state so far as local regulations were concerned, subject only to the control of general laws.' * * *

"If, therefore, the ordinance here considered may be upheld under the general police powers of the city as exercised by its legislative body, it will not fall merely because the city has specific authority under its charter to suppress certain kinds of business."

In re Montgomery, 163 Cal. 457, 459-60.

II.

In California the grant of a franchise is a legislative function and where, as here, no grant of power to fix rates by contract exists, franchise fare provisions cannot operate by way of condition (*City of Arcata v. Green*, 156 Cal. 759, 762-4; p. 44, appellee's brief); by way of estoppel (*Town of St. Helena v. Ewer*, 26 Cal. App. 191,

195-6-7; pp. 46-7, appellee's brief); or as part consideration for the grant (*Thompson v. Board of Supervisors,* 111 Cal. 553, 557-8; p. 50, appellee's brief).

In *San Antonio v. San Antonio Public Service Co.,* 255 U. S. 547, 556, the city argued that "although no contract was possible under the constitutional restriction which would bind the city not to lower the rate, nevertheless there was a unilateral contract or condition resulting from the granting of the franchise which bound the railway company to the franchise rate * * *."

The Court dismissed this contention on two grounds, stating:

> "There is not the slightest suggestion of any attempt on the part of the parties consciously to produce such a condition. But besides, the error underlying the proposition is not far to seek. The duty of an owner of private property used for the public service to charge only a reasonable rate, and thus respect the authority of government to regulate in the public interest, and of government to regulate by fixing such a reasonable rate as will safeguard the rights of private ownership, are interdependent and reciprocal. Where, however, the right to contract exists and the parties, the public, on the one hand, and the private owner, on the other, do so contract, the law of the contract governs both the duty of the private owner and the governmental power to regulate. Were, therefore, as in the case supposed in the argument, the regulating power of government wholly uncontrolled by contract, it would follow that that power would be required to be exerted, and hence the supposed condition operating upon the private owner would be nugatory. Such a case really presents no question of a condition, since it resolves

itself into a mere issue of the exercise by government of its regulatory power."

San Antonio v. San Antonio Public Service Co., 255 U. S. 547, 556.

And in *Southern Iowa Electric Co. v. Chariton*, 255 U. S. 539, 546, the Court said:

"The total want of power of the municipalities here in question to contract for rates, which is thus established, and the state public policy upon which the prohibition against the existence of such authority rests, absolutely exclude the existence of the right to enforce, as the result of the obligation of a contract, the concededly confiscatory rates which are involved, and therefore conclusively demonstrate the error committed below in enforcing such rates upon the theory of the existence of contract. And, indeed, the necessity for this conclusion becomes doubly manifest when it is borne in mind that the right here asserted to contract in derogation of the state law and of the rule of public policy announced by the court of last resort of the state is urged by municipal corporations whose every power depends upon the state law."

Southern Iowa Electric Co. v. Chariton, 255 U. S. 539, 546.

III.

Section 32a of the Public Utilities Act (pp. 64, 67-8, appellee's brief) charges the Commission with the duty, after hearing, of fixing and determining just, reasonable and sufficient rates, whether the existing rates were fixed by contract or otherwise. And section 27 of the Public Utilities Act (footnote 3, majority opinion) gives appel-

lee the right to charge more than five cents upon its showing before the Commission that a higher charge is justified. Appellee has made such a showing before the Commission and it is conceded that the franchise fares are insufficient. In this situation the court quite properly, we submit, applied the principle which the majority opinion quotes from *Denney v. Pacific Tel. & Tel. Co.*, 276 U. S. 97. (See also, pp. 56 to 70, inc., appellee's brief.)

Moreover, granting that if the franchise fare provisions were contracts, appellee's right to relief therefrom, when confiscatory, would be statutory, nevertheless the Commission's arbitrary denial of such relief, after proper showing, results in a denial of the due process and equal protection guarantees of the federal Constitution. As said in *Interstate Commerce Comm. v. Louis. & Nash. R. R. Co.*, 227 U. S. 88, 91:

> "But the statute here gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless. And if the government's contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our government. It would mean that, where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority, however beneficiently exercised in one case, can be injuriously exerted in another, is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power."
>
> *Interstate Commerce Comm. v. Louis & Nash. R. R. Co.*, 227 U. S. 88, 91.

Conclusion.

The petition for rehearing presents no point or argument which was not before the court on the original submission. This is strikingly emphasized by the fact that the petition consists in the main of a reiteration of the views expressed in the dissenting opinions. The purport of these dissenting opinions is briefly that the cause should be remanded to the District Court for an interpretation of the various statutory and constitutional provisions involved and a determination anew of whether appellee, under its franchises, is bound by contract to maintain a five cent fare. We respectfully but earnestly submit that these issues have been thoroughly considered and fully determined in the majority opinion; that nothing constructive would be gained by a rehearing or by remanding, and that the petition therefor should be denied.

Respectfully submitted,

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Los Angeles, California, December 20th, 1929.

SUPREME COURT OF THE UNITED STATES.

No. 60.—October Term, 1929.

The Railroad Commission of the State of California and the City of Los Angeles, Appellants, *vs.* Los Angeles Railway Corporation.	Appeal from the District Court of the United States for the Southern District of California.

[December 2, 1929.]

Mr. Justice Butler delivered the opinion of the Court.

Appellee operates a street railway system and motor busses for the transportation of passengers in the city of Los Angeles and in other parts of the county of Los Angeles. Its cars are operated on tracks laid in the streets under authority of 102 franchises granted from time to time since 1886. A few were obtained from the county; the others were granted by the city.

Seventy-three granted between November 28, 1890, and October 21, 1918, covering 113.41 miles, provide that "the rate of fare . . . shall not exceed five cents".

Eighteen granted between March 2, 1920, and January 21, 1928, covering 12.33 miles, provide that "the rate of fare . . . shall not be more than five cents . . . except upon a showing before a competent authority having jurisdiction over rates of fare that such greater charge is justified."

The remaining eleven, covering 10.5 miles, were granted at various times from 1886 to 1923; none of them provides that the fare shall not exceed five cents; but it may be assumed that under the provisions of the other ordinances a fare of five cents was made applicable over all lines. Prior to the decree in this case the basic fare charged was five cents.

Maintaining that its existing rates were not sufficient to yield a reasonable return, the company, November 16, 1926, applied to the commission for authority to increase the basic fare to seven cents in cash or six and one-fourth cents in tokens to be furnished

by the company, four for twenty-five cents. The commission, March 26, 1928, made a report and by an order denied the application. A petition for rehearing was denied.

June 22, 1928, the company brought this suit to have the rates and order adjudged confiscatory and for temporary and permanent injunctions restraining the commission from enforcing them. The city intervened as party defendant. The case came on for hearing before three judges on an application for temporary injunction. U. S. C., Tit. 28, § 380. Affidavits were submitted, a transcript of all the evidence before the commission was received and the parties stipulated that thereon the case should be finally determined on the merits. The court found that the rates will not permit the company to earn a reasonable return and are confiscatory; and by its decree permanently enjoined the commission from enforcing them.

The sole controversy is whether the company is bound by contract with the city to continue to serve for the fares specified in the franchises—it being conceded that the finding below respecting the inadequacy of the five cent fare is sustained by the evidence. Appellants contend that at all times the city had power to establish rates by agreement and that the franchise provisions constitute binding contracts that are still in force. On the other hand the company maintains that the State never so empowered the city; and it insists that, if the power was given and any such contracts were made, they have been abrogated.

1. It is possible for a State to authorize a municipal corporation by agreement to establish public service rates and thereby to suspend for a term of years not grossly excessive the exertion of governmental power by legislative action to fix just compensation to be paid for service furnished by public utilities. *Detroit* v. *Detroit Citizens' Ry. Co.*, 184 U. S. 368, 382. *Vicksburg* v. *Vicksburg Water Works Co.*, 206 U. S. 496, 508, 515. *Public Service Co.* v. *St. Cloud*, 265 U. S. 352, 355. And where a city, empowered by the State so to do, makes a contract with a public utility fixing the amounts to be paid for its service, the latter may not be required to serve for less even if the specified rates are unreasonably high. *Detroit* v. *Detroit Citizens' Ry. Co., supra*, 389. And, in such case, the courts may not relieve the utility from its obligation to serve at the agreed rates however inadequate they may prove to be. *Public Service Co.* v. *St. Cloud, supra.*

This court is bound by the decisions of the highest courts of the States as to the powers of their municipalities. *Georgia Ry. Co.* v. *Decatur,* 262 U. S. 432, 438. Our attention has not been called to any California decision, and we think there is none, which decides that the state legislature has empowered Los Angeles to establish rates by contract. This Court is therefore required to construe the state laws on which appellants rely. As it is in the public interest that all doubts be resolved in favor of the right of the State from time to time to prescribe rates, a grant of authority to surrender the power is not to be inferred in the absence of a plain expression of purpose to that end. The delegation of authority to give up or suspend the power of rate regulation will not be found more readily than would an intention on the part of the State to authorize the bargaining away of its power to tax. *Providence Bank* v. *Billings,* 4 Peters 514, 561. *Railroad Commission Cases,* 116 U. S. 307, 325. *Freeport Water Co.* v. *Freeport,* 180 U. S. 587, 599. *Stanislaus County* v. *San Joaquin C. & I. Co.,* 192 U. S. 201, 210. *Puget Sound Traction Co.* v. *Reynolds,* 244 U. S. 574, 579.

This court applied the established rule in *Home Telephone Co.* v. *Los Angeles,* 211 U. S. 265. That company's franchise was granted under the Broughton Franchise Act which provided that every such franchise "shall be granted upon the conditions in this act provided and not otherwise". The city charter gave power to its council to fix charges for telephone service. The franchise stated that the rates should not exceed specified amounts. An ordinance prescribing lower rates was passed. The company brought suit for injunction against its enforcement on the ground that the ordinance violated the contract clause of the Constitution of the United States. The city insisted that it had not been empowered by the State to make such a contract, and this court upheld its contention. It said (p. 273): "The surrender, by contract, of a power of government, though in certain well-defined cases it may be made by legislative authority, is a very grave act, and the surrender itself, as well as the authority to make it, must be closely scrutinized. . . . The general powers of a municipality or of any other political subdivision of the State are not sufficient. Specific authority for that purpose is required." And dealing with the charter provision there relied on by the company the court

said (p. 274): "The charter gave to the council the power 'by ordinance . . . to regulate telephone service and the use of telephones within the city, . . . and to fix and determine the charges for telephones and telephone service and connections.' This is an ample authority to exercise the governmental power . . . but entirely unfitted to describe the authority to contract. It authorizes command, but not agreement."

Section 470 of the Civil Code (March 21, 1872) cited by appellants merely regulates procedure. Section 497 authorizes political subdivisions to grant authority for the laying of railroads in streets "under such restrictions and limitations" as they may provide. Stats. 1891, p. 12. This is too general. The clause in § 501 (Stats. 1903, p. 172) providing that the rate of fare in municipalities of the first class "must not exceed five cents" does not relate to the power to contract, and plainly has no application here because Los Angeles never belonged to that class.

Section 1 of the Broughton Franchise Act[1] provides that franchises "shall be granted upon the conditions in this Act provided and not otherwise". The Act requires the sale of such franchises upon advertisement stating the character of the franchise or privilege proposed to be granted, but it nowhere expressly empowers the city to establish rates by contract. This court in the *Home Telephone Company* case dealt with the quoted provision. It said (p. 275): "Here is an emphatic caution against reading into the act any conditions which are not clearly expressed in the act itself. . . . It cannot be supposed that the legislature intended that so significant and important an authority as that of contracting away a power of regulation conferred by the charter should

[1]Its first sentence, as originally enacted, read: "Every franchise or privilege to . . . construct or operate railroads along or upon any public street or highway, or to exercise any other privilege whatever hereafter proposed to be granted by the . . . governing or legislative body of any . . . city . . . shall be granted upon the conditions in this Act provided, and not otherwise." Stats. 1893, p. 288. The Act was amended in 1897 (Stats. 1897, pp. 135, 172); re-enacted in 1901 (Stats. 1901, p. 265) and 1905 (Stats. 1905, p. 777) and amended in 1909. Stats. 1909, p. 105. The first sentence has remained substantially the same. The amendment of June 8, 1915 (Stats. 1915, p. 1300) inserted immediately after this sentence: "The grantor may, however, in such franchise impose such other and additional terms and conditions not in conflict herewith, whether governmental or contractual in character, as in the judgment of the legislative body thereof are to the public interest."

be inferred from the act in the absence of a grant in express words. But there is no such grant." And, so far as concerns the matter under consideration, the Act was not expanded by the amendment of June 8, 1915. It authorizes grantors of such franchises to impose such additional terms and conditions "whether governmental or contractual in character" as in their judgment are in the public interest. This general language does not measure up to the rule earlier invoked here by Los Angeles and applied by this court in the *Home Telephone Company* case.

The appellants invoke provisions of the city charter which are printed in the margin.[2] But it requires no discussion to show that they are not sufficient to empower the city by contract to establish rates. In support of their claim, they cite *Columbus Ry. & Power Co.* v. *Columbus*, 249 U. S. 399; *Opelika* v. *Opelika Sewer Co.*, 265 U. S. 215; *Public Service Co.* v. *St. Cloud*, *supra*, and *Southern Utilities Co.* v. *Palatka*, 268 U. S. 232. But the *Columbus* case did not involve, and this Court did not there decide, the question of power. See p. 407 and 194 U. S. at pp. 532, 534. And in the other cases, we followed the decisions of the courts of the respective States.

Appellants have failed to sustain their contention that the city was empowered to make such rate contracts.

2. But assuming that the fares were established by the franchise contracts we are of opinion that such contracts have been abro-

[2]Art. I, § 2(25) (February 16, 1905) Stats. 1905, p. 994, providing that no franchise for use of public streets should be granted by the city except by a specified vote nor for a term of more than 21 years and that "Every grant . . . shall make adequate provision by way of forfeiture . . or otherwise to secure efficiency of public service at reasonable rates and the maintenance of the property in good order throughout the term of the grant."

Art. I, § 2(30) (March 25, 1911) Stats. 1911, p. 2063: "The city . . . shall have the right and power: . . . to fix and determine the rates . . . for . . . the conveyance of passengers . . . by means of street railway . . . cars. . . . To regulate, subject to the provisions of the constitution of the State of California, the construction and operation of . . . street railways. . . ."

Art. I, § 2(40), being § 2(25), *supra*, (as amended March 11, 1913) Stats. 1913, p. 1633: "The city . . . shall have the right and power: To grant franchises, . . . for furnishing . . . transportation . . . or any other public service; to prescribe the terms and conditions of any such grant, and to prescribe by ordinance . . . the method of procedure for making such grants; . . ."

gated. The State had power upon the company's application, through its commission or otherwise, to terminate them. *Pawhuska* v. *Pawhuska Oil & Gas Co.*, 250 U. S. 394. *Trenton* v. *New Jersey*, 262 U. S. 182, 186. *Henderson Water Co.* v. *Corporation Commission*, 269 U. S. 279. *Denney* v. *Pacific Tel. Co.*, 276 U. S. 97.

November 30, 1918, the company applied to have the commission investigate its service and financial condition and for an order authorizing it to "so operate its system and change its rates that the income will be sufficient to pay the costs of the service". May 31, 1921, the commission found that the existing fares would not permit the company to collect enough to enable it to provide adequate service. See P. U. R. 1922A 66, 90. And it made an order permitting a small increase. The company did not accept it, but applied for a rehearing. After several postponements the case was stricken from the calendar, and some years later the company asked that its application be dismissed. The commission, October 18, 1926, granted the company's request and also revoked the order.

Shortly thereafter the company applied for a basic fare of seven cents in cash or six and one-quarter cents in tokens. The fares so proposed were substantially higher than those which were not accepted by the company. Again the commission made extensive investigations. And March 26, 1928, it filed a report which contained findings as to the value of the property, operating revenues, operating expenses including cost of depreciation and taxes, amount available for return, average net income for five years ending with 1926, stated that the cost of operation might be reduced, and concluded that by reason of such facts the rates of fare charged by the company were not unreasonable and that the rates proposed would be unjust and unreasonable. And the commission made an order denying the company's application.

There is no decision in the courts of the State as to the effect of the proceedings before and action taken by the commission, and therefore we are required to construe the applicable provisions of the local constitution and statutes. *Denney* v. *Pacific Tel. Co.*, *supra*, 101. Under the state constitution, Art. XII, § 23, as amended November 3, 1914, and the Public Utilities Act of April 23, 1915, the commission has exclusive power to regulate rates. And § 27 of the Act[3] gave to street railway companies the right to charge more than five cents upon showing before the commission that the higher charge is justified. No distinction is made between

rates established by franchise contracts and those otherwise fixed. Fares may not be changed without approval of the commission. The policy of the State is that all rates shall be just and reasonable (§ 15) and the commission is directed, whenever after hearing had upon its own motion or upon complaint it shall find that rates are unjust or insufficient, to determine the just and reasonable rates thereafter to be observed. § 32(a).[4] The language used in *Denney* v. *Pacific Tel. Co.*, *supra*, p. 102, is pertinent here. "The Department made its investigation and order without regard to the franchise rates and treated the questions presented as unaffected thereby. It exercised the power and duty to fix reasonable and compensatory rates irrespective of any previous municipal action. We must treat the result as a bona fide effort to comply with the local statute."

The proceedings before the commission and its orders clearly show that it twice took jurisdiction to determine just and reasonable rates. Its order of May 31, 1921, by reason of the company's failure to put in the increased rates never became operative and finally was vacated. The report and order of March 26, 1928, found that existing rates were just and reasonable and in legal effect required the company to continue to observe them. The court below found the rates confiscatory, and appellants do not here question that finding.

Decree affirmed.

Mr. Justice McReynolds is of opinion that, as our finding that the city had no power to make rate contracts is sufficient to dispose of the case, it would be better not to take up the second point.

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[3]Section 27 declares that fares of more than five cents shall not be charged on street railroads "except upon a showing before the commission that such greater charge is justified; provided, that until the decision of the commission upon such showing, a street . . . railroad . . . may continue to . . . receive the fare lawfully in effect on November 3, 1914. Stats. 1915, p. 131.

[4]Section 32(a): "Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rates . . . collected by any public utility . . . are unjust, unreasonable, discriminatory or preferential, or in anywise in violation of any provision of law or that such rates . . . are insufficient, the commission shall determine the just, reasonable or sufficient rates . . . to be thereafter observed and in force, and shall fix the same by order as hereinafter provided." Stats. 1915, p. 132.

SUPREME COURT OF THE UNITED STATES.

No. 60.—October Term, 1929.

The Railroad Commission of California et al., *vs.* Los Angeles Railway Corporation.	On Appeal from the District Court of the United States for the Southern District of California.

[December 2, 1929]

Mr. Justice Brandeis, dissenting.

The Railway claims that the Commission's refusal to authorize a fare higher than five cents confiscates its property. The City and the Commission do not insist here that the five-cent fare is compensatory; and they concede that, since 1915, the latter has had jurisdiction to authorize a higher fare. They defend solely on the ground that the Railway bound itself by contracts not to charge more; that these contract provisions are still in force, except as modified by the Act of 1915 empowering the Commission to authorize changes in the rate; that an alleged error of the Commission in refusing authority to charge more can be corrected only by proceedings brought in the Supreme Court of the State to compel the Commission to do its duty; and that the lower court's finding that the rate is non-compensatory is, therefore, immaterial.

The District Court recognized that such contracts, if existing, would be a complete defense to this suit, *Columbus Ry. & Power Co.* v. *Columbus*, 249 U. S. 399; *Georgia Ry. & Power Co.* v. *Decatur*, 262 U. S. 432; *Opelika* v. *Opelika Sewer Co.*, 265 U. S. 215; *St. Cloud Public Service Co.* v. *St. Cloud*, 265 U. S. 352; *Southern Utilities Co.* v. *Palatka*, 268 U. S. 232; expressed a strong doubt whether the City ever had the power to contract concerning the rate of fare; and, declining to pass upon that question, granted the relief prayed for solely on the ground that any such contract right which existed had been abrogated.

The franchises under which the Railway is operating are confessedly contracts. The words used concerning the rate of fare are

apt ones to express contractual obligations. The Railway contends, however, that the fare provisions were not intended to be contracts, and that, if they were so intended, they were not binding, because neither the City nor the County had the power to contract as to the rate of fare. It insists further that if the fare provisions were originally binding as contracts, they were abrogated in 1921 or 1928 by action of the Commission.

First. Most of the franchises were granted before the State had vested in the Commission power to regulate street railway rates or had expressly reserved to itself, otherwise, the power to change rates theretofore fixed by ordinance. This power of regulation was first expressly conferred upon the Commission in 1915, by amendments to §§ 13, 27 and 63 of the Public Utilities Act, Stats. 1915, p. 115, made pursuant to an amendment of § 23 of Article XII of the California Constitution adopted November 3, 1914. These enactments did not purport to abrogate any existing contract. Nor did they purport to take from the City or from the County any power theretofore possessed to make a contract concerning the rate of fare. Their effect was merely to make any such contract, whether theretofore or thereafter entered into, subject to change by the Commission. Unless and until so changed a contractual fare fixed by franchise remains in full force. *Henderson Water Co.* v. *Corp. Comm.*, 269 U. S. 278, 281-2. Consequently, it is not here claimed that these enactments alone abrogated the alleged contracts as to rate of fare.

Second. The Railway contends, however, that the Commission abrogated the fare contracts by its action taken in 1921 pursuant to this legislation. The facts are these. In 1918, the Railway asked the Commission to make an investigation of its service and its financial condition and for an order enabling it to so operate its system that the income would be sufficient to pay the cost of the service. In that application the Railway expressly disclaimed any desire to increase its rate of fare, but about two years later, it made a supplemental application for leave to do so. On May 31, 1921, the Commission made a report in which it declared that "an increase in the fare in some form" should be granted; and that the Railway be authorized "to file with the Commission and put into effect within thirty (30) days from the date of this order a schedule of rates increasing the present basic 5-cent fare to 6 cents," ten tickets for 50 cents. 19 Cal. R. R. Comm. Op. 980, 1002. The Rail-

way did not file a schedule of fares. Instead, it moved for a rehearing. That motion was promptly set down for hearing by the Commission, but was never heard. For the Railway asked first for an adjournment; then that its motion be stricken from the calendar; and finally, that an order be entered setting aside the decision made and dismissing the entire proceeding, including the application for increase of fare. This request of the Railway was granted, the order of dismissal reciting that the authorization to increase the fare had "been suspended by virtue of the pendency of a petition for rehearing," as the statutes provided. Public Utility Act, § 66. Obviously this action taken in 1921 cannot be deemed an abrogation or modification of any existing fare provision of the franchises, unless it be held that mere entry by the Commission upon an enquiry as to the rate of fare, as commanded by the statute, has that effect. Reason and authority are to the contrary.

Third. Nor did the action taken by the Commission in 1928, in the proceedings now under review, abrogate any existing fare provision. There also the Commission took jurisdiction, as it was by the statute required to do. It refused to authorize a higher fare, because it concluded that for the past five years the Railway had been earning an average annual return of 7.1 per cent; that it was not being efficiently operated; that the management had failed to introduce certain economies previously recommended which would have increased its net earnings; and that for these reasons the existing five-cent fare was just and reasonable. The Commission may have erred in its judgment, but it is clear that it did not change the rate of fare. In *Georgia Ry. & Power Co.* v. *Decatur,* 262 U. S. 432, 439, it was held that the assumption of jurisdiction by the Commission to the extent of affirmatively ordering the continuance of existing transfer privileges did not effect an abrogation of an existing contract provision relating thereto, since such action did not conflict with the terms of the contract. Compare *Los Angeles* v. *Los Angeles City Water Co.,* 177 U. S. 558, 578-84; *Minneapolis* v. *Street Ry. Co.,* 215 U. S. 417, 435. In *Denney* v. *Pacific Telephone Co.,* 276 U. S. 97, the Commission had previously granted an increase in fare of which the Company had availed itself.

Assuming that the Railway was bound by contract to maintain a five-cent fare, it could be relieved from its obligation only by the

Commission. Had the Commission authorized an increase in fare, it would still be questionable whether the contract would have been thereby abrogated or only modified by making the Railway's obligation less onerous. Surely, the Commission's refusal to grant any help, because in its opinion none is needed, cannot have the anomalous effect of entirely relieving the Railway of its obligation.

Fourth. If the District Court erred in holding that the action taken in 1921 or 1928 had the effect of abrogating any existing contract, there must be a determination whether such contracts did exist, in fact and law. It was assumed by the District Court and by counsel in this Court that if the City lacked the power to bind itself contractually by the fare provisions, the Railway could not be bound thereby. This conclusion is not commanded by logic or by the law of contracts. Lack of power in the municipality to bind itself is a factor to be considered in determining whether the parties intended to enter into a contract. But, if they did, the Railway's promise need not fail for lack of mutuality. The law does not require that a particular contractual obligation must be supported by a corresponding counter-obligation. It is conceded that the City possessed the power to enter into the franchise contract. The contention is merely that it could not surrender its power to regulate rates. But there is nothing in the fare provisions to indicate that the City attempted to do that. These provisions in terms bind only the Railway. The Railway unquestionably had power to agree to charge a fixed fare. The grant of the franchise is sufficient consideration, if so intended, for any number of contractual obligations which the Railway may have chosen to assume. In *Southern Iowa Electric Co.* v. *Chariton*, 255 U. S. 539, a case coming from Iowa, it was held, following Iowa decisions, that since the city lacked power to bind itself, there was no contract. And there is a statement to that effect in *San Antonio* v. *San Antonio Public Service Co.*, 255 U. S. 547, 556. But in *Southern Utilities Co.* v. *Palatka*, 268 U. S. 232, 233, the question was expressly left open. Obviously, that is a matter of state law on which the decisions of this Court are not controlling.

Fifth. If it be true that the Railway is not bound by the fare provisions, unless the City had power to bind itself in that respect, it is necessary to determine whether the City had that power and

whether the parties did in fact contract as to the rate of fare. Whether the City had the power is, of course, a question of state law. In California, the constitution and the statutes leave the question in doubt. Counsel agree that there is no decision in any court of the State directly in point. They reason from policy and analogy. In support of their several contentions they cite, in the aggregate, 30 decisions of the California courts, 15 statutes of the State, besides 3 provisions of its code and 7 provisions of its constitution. The decisions referred to occupy 308 pages of the official reports; the sections of the constitution, code and statutes, 173 pages. Moreover, the 102 franchises here involved were granted at many different times between 1886 and 1927. And during that long period, there have been amendments both of relevant statutes and of the constitution. The City or the County may have had the power to contract as to the rate of fare at one time and not at another. If it is held that the City or the County ever had the power to contract as to rate of fare, it will be necessary to examine the 102 franchises to see whether the power was exercised. It may then be that some of the franchises contain valid fare contracts, while others do not. In that event, the relief to be granted will involve passing also on matters of detail.

In my opinion, these questions of statutory construction, and all matters of detail, should, in the first instance, be decided by the trial court. To that end, the judgment of the District Court should be vacated and the case remanded for further proceedings, without costs to either party in this Court. Pending the decision of the trial court an interlocutory injunction should issue. Compare *City of Hammond* v. *Schappi Bus Line*, 275 U. S. 164; *City of Hammond* v. *Farina Bus Line & Transportation Co.*, 275 U. S. 173; *Ohio Oil Co.* v. *Conway*, 279 U. S. 813. It is a serious task for us to construe and apply the written law of California. Compare *Gilchrist* v. *Interborough Rapid Transit Co.*, 279 U. S. 159, 207-209. To "one brought up within it, varying emphasis, tacit assumptions, unwritten practices, a thousand influences gained only from life, may give to the different parts wholly new values that logic and grammar never could have got from the books." *Diaz* v. *Gonzalez*, 261 U. S. 102, 106. This Court is not peculiarly fitted for that work. We may properly postpone the irksome burden of examining the many relevant state statutes and decisions until we shall

have had the aid which would be afforded by a thorough consideration of them by the judges of the District Court, who are presumably more familiar with the law of California than we are. The practice is one frequently followed by this Court.[1]

In the case at bar, there are persuasive reasons for adopting the course suggested. The subject matter of this litigation is local to California. The parties are all citizens of that State and creatures of its legislature. Since the Railway denies that there ever was a valid contract governing the rate and asserts that if any such existed they have been abrogated, the contract clause of the Fed-

[1]This course was pursued in the following, among other cases, in which a lower Federal court erroneously left undecided a question of local law or of its application, Gainesville *v.* Brown-Crummer Co., 277 U. S. 54, 61, Hammond *v.* Schappi Bus Line, 275 U. S. 164, 169-72, Hammond *v.* Farina Bus Line, 275 U. S. 173, 174-5, Wilson Cypress Co. *v.* Del Pozo, 236 U. S. 635, 656-7; in the following cases in which the lower court erroneously left undetermined a question of fact, Security Mortgage Co. *v.* Powers, 278 U. S. 149, 159, United States *v.* Magnolia Co., 276 U. S. 160, 164-5, United States *v.* Brims, 272 U. S. 549, 553, Gerdes *v.* Lustgarten, 266 U. S. 321, 327, Chastleton Corp. *v.* Sinclair, 264 U. S. 543, 548-9, Vitelli & Son *v.* United States, 250 U. S. 355, 359, Southern Pacific Co. *v.* Bogert, 250 U. S. 483, 494, 497, Union Pac. R. R. Co. *v.* Weld County, 247 U. S. 282, 287, Marconi Wireless Co. *v.* Simon, 246 U. S. 46, 57, Owensboro *v.* Owensboro Waterworks, 191 U. S. 358, 372, Chicago, Milwaukee &c. Ry. *v.* Tompkins, 176 U. S. 167, 180; in the following cases in which the Circuit Court of Appeals did not review the merits because of an erroneous view of the jurisdiction of the District Court, Guardian Savings Co. *v.* Road Dist., 267 U. S. 1, 7, Brown *v.* Fletcher, 237 U. S. 583, 586-8, cf. Louie *v.* United States, 254 U. S. 548, 551; in the following cases in which the Circuit Court of Appeals restricted its review because it erroneously regarded the action as one at law instead of a suit in equity, Twist *v.* Prairie Oil Co., 274 U. S. 684, 692, Liberty Oil Co. *v.* Condon Bank, 260 U. S. 235, 245; in the following cases in which the Circuit Court of Appeals erroneously narrowed the scope of its review for other reasons, Krauss Bros. Co. *v.* Mellon, 276 U. S. 386, 394, National Brake Co. *v.* Christensen, 254 U. S. 425, 432; in the following cases in which the State court placed its decision on an erroneous view of federal law, and, therefore, did not consider the questions of local law involved, Chicago & N. W. Ry. *v.* Durham Co., 271 U. S. 251, 257-8, Sioux City Bridge Co. *v.* Dakota County, 260 U. S. 441, 445-7, Ward *v.* Love County, 253 U. S. 17, 25. In all of these cases, this Court recognized its undoubted power to decide the matters erroneously left undetermined by the courts below; but it preferred to remand the cases for further procedings, either on the ground that the determination of the undecided issues was too burdensome a task, or on the ground that those issues should more appropriately be decided, in the first instance, by the lower courts.

eral Constitution is not involved. The alleged existence of contracts concerning the rate of fare presents the fundamental issue of the case. Whether such contracts exist, or ever existed, depends wholly upon the construction to be given to laws of the State. Upon these questions, the decision of the Supreme Court of California would presumably have been accepted by this Court, if the case had come here on appeal from it. Compare *Georgia Ry. & Power Co.* v. *Decatur*, 262 U. S. 432, 438; *Appleby* v. *City of New York*, 271 U. S. 364, 380.

The constitutional claim of confiscation gave jurisdiction to the District Court. We may be required, therefore, to pass, at some time, upon these questions of state law. And we may do so now. But the special province of this Court is the Federal law. The construction and application of the Constitution of the United States and of the legislation of Congress is its most important function. In order to give adequate consideration to the adjudication of great issues of government, it must, so far as possible lessen the burden incident to the disposition of cases, which come here for review.[2]

Mr. Justice HOLMES joins in this opinion.

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[2]Compare "Distribution of Judicial Power between the United States and State Courts", by Felix Frankfurter, XIII Cornell Law Quarterly, 499, 503; "The Business of the Supreme Court at October Term 1928," by Frankfurter and Landis, XLIII Harvard Law Review, 33, 53, 56, 59-62.

SUPREME COURT OF THE UNITED STATES.

No. 60.—October Term, 1929.

The Railroad Commission of the State of California and the City of Los Angeles, Appellants, *vs.* Los Angeles Railway Corporation.	Appeal from the District Court of the United States for the Southern District of California.

[December 2, 1929.]

Dissenting opinion of Mr. Justice Stone.

I agree with Mr. Justice Brandeis that this case should have been disposed of by remanding it to the district court of three judges for determination whether the railway company, under its 102 franchises, or any of them, is bound by contract to maintain a five-cent fare. That question is I think different from the one presented in *Home Telephone Co.* v. *Los Angeles*, 211 U. S. 265, and involved in *Detroit* v. *Detroit Citizens Railway Co.*, 184 U. S. 368; *Vicksburg* v. *Vicksburg Water Works Co.*, 206 U. S. 496, whether the city had the requisite legislative authority to bind itself not to reduce the rate of fare fixed by the franchise. Here concededly the power to regulate rates is reserved to the state commission and the question preliminary to the whole case is whether the railroad company has bound itself to serve for a five-cent fare. I know of no principle of the law of contracts, *qua* contracts, which would preclude its doing so, even though the city had no power to obligate itself to maintain any particular rate. It has not purported to exercise such power by so contracting. It had power to grant franchises and the grant of the franchise without more would be good consideration for the company's undertaking to maintain a five-cent fare. Williston on Contracts, §§ 13, 140.

The provision of the statute of March 1, 1913, enacted after the decision in *Home Telephone Co.* v. *Los Angeles, supra*, authorizing the city to grant franchises and "to prescribe the terms and con-

ditions" of the grant, and that of the act of June 8, 1915, authorizing the grantor of the franchise to impose terms and conditions "whether governmental or contractual in character", to quote no others, would seem to permit the city to acquire by the mere grant of the franchise, without other obligation on its part, such contractual undertakings on the part of the railroad company as did not contravene the public interest.

If there be any public policy forbidding the company so to bind itself or forbidding the city to take advantage of the undertaking so given and acquired, it is one peculiar to local law, having its origin in local history and conditions, and so is peculiarly an appropriate subject for consideration, in the first instance, by the court of the district.

But as the Court, without dealing with this aspect of the matter, has held that the railway company is not so bound, it is unnecessary to decide that the state railroad commission's refusal to raise the rate would have been enough to abrogate the contract, if there had been one, and the practice of the Court not to pass on questions of constitutional or state law not necessary to a decision should, I think, be scrupulously observed. Even if necessary to decide the question, I would not be prepared to say that the refusal of the commission to fix a fare different from the contract rate would destroy the contract. By contracting for a five-cent fare, the railway company waived the protection of the due process clause of the Fourteenth Amendment. *Columbus Ry. Co.* v. *Columbus*, 249 U. S. 399; *Southern Iowa Electric Co.* v. *Chariton*, 255 U. S. 539, 542; *Paducah* v. *Paducah Ry. Co.*, 261 U. S. 267, 272; *Georgia Ry. Co.* v. *Decatur*, 262 U. S. 432, 438; *Henderson Water Co.* v. *Corporation Commission of N. C.*, 269 U. S. 278, 281. Granting that the contract was subject to the power and duty of the commission to modify it by changing the rate, that power has not been exercised and the duty is one arising, not under the Constitution and laws of the United States, but is imposed by state statute, for breach of which a state remedy alone should be given. See *Henderson Water Co.* v. *Corporation Commission*, *supra*, 282 (compare *Corporation Commission* v. *Henderson Water Co.*, 190 N. C. 70).